(24,574)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 830.

WILLIAM TRUAX, SR., WILEY E. JONES, ATTORNEY GENERAL OF THE STATE OF ARIZONA, AND W. G. GILMORE, COUNTY ATTORNEY OF COCHISE COUNTY, ARIZONA, APPELLANTS,

vs.

MIKE RAICH.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

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a *Names and Addresses of Attorneys of Record.*

John S. Williams, Bisbee, Arizona; Edward J. Flanigan, Bisbee, Arizona; John H. Campbell, Tucson, Arizona, Solicitors for plaintiff.

Pillsbury, Madison & Sutro, San Francisco, California; Wiley E. Jones, Attorney General of the State of Arizona, Phœnix, Arizona; Leslie C. Hardy, Assistant Attorney General of the State of Arizona, Phœnix, Arizona; W. B. Cleary, Bisbee, Arizona, Solicitors for Defendants.

1 In the District Court of the United States in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RIACH, Plaintiff,

vs.

WILLIAM TRUAX, Sr., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. GILMORE, County Attorney of Cochise County, Defendants.

Bill of Complaint.

To the Honorable Judges of the District Court aforesaid:

Mike Riach, as complainant, brings this his bill of complaint against said defendants, and each of them, and thereupon your orator complains and says:

1. Complainant is a native of Austria, and is an alien under the laws of the United Sattes of America, and is not a qualified elector under the laws of the State of Arizona, and has not, and cannot by reason of his status as an alien, become such qualified elector unless and until he shall have first become a citizen of the United States. Complainant is an inhabitant and resident of Cochise County, in the State of Arizona, and is lawfully within the territorial limits of the United States of America. Said William Truax, Sr., is the owner and proprietor of a certain restaurant in the City of Bisbee, Cochise County, Arizona, and as such employs nine employees or workers in the conduct of his said restaurant business, seven of whom are neither native-born citizens of the United States, nor qualified electors, but who are on the contrary aliens, under the laws of the United States of America. That Wiley E. Jones

2 is the Attorney General of the State of Arizona, and W. G. Gilmore is the County Attorney of Cochise County in said State, said last named defendant-, in their respective capacities named, holding office under and by virtue of the laws of the State of Arizona.

2. Complainant is now and for some time last past has been in the employ of said defendant William Truax, Sr., in his said res-

taurant business so conducted at Bisbee, Cochise County, Arizona, such employment being that of a cook.

3. Under the laws of the State of Arizona it is the duty of the Attorney General thereof, amongst other things, to attend the Supreme Court of said State and to prosecute or defend all cases to which said State, or any officer thereof, in his official capacity, is a party, and when required by the public service or directed by the Governor, to repair to any county in the State and assist the County Attorney thereof in the discharge of his duties; and it is the duty of said County Attorney of Cochise County to attend the Superior and other courts, and conduct, on behalf of said State, all prosecutions for public offenses; that under the laws of said State all prosecutions for public offenses under the laws are conducted in the name of said State, and by its authority, and it is the party defendant in all such prosecutions, and as such is represented by said W. G. Gilmore, County Attorney, for all prosecutions in said Cochise County, and by said Wiley Jones as Attorney General in the cases referred to and mentioned hereinabove.

4. At an election held in said State on the third day of November, 1914, there was, under and in accordance with the provision of Paragraph 3328, Revised Statutes of Arizona, 1913, submitted to the qualified voters of said State for their approval or rejection, under what is known as the initiative clause and provisions of the Constitution of Arizona, being Section 1 of Article IV of said Constitution, a certain proposed measure, which is in the words and figures as follows, to-wit:

3 "An Act to Protect the Citizens of the United States in Their Employment Against Non-Citizens of the United States, in Arizona, and to Provide Penalties and Punishment for the Violation Thereof,

"Be it Enacted by the People of the State of Arizona:

"SECTION 1. Any company, corporation, partnership, association or individual who is, or may hereafter become an employer of more than five (5) workers at any one time, in the State of Arizona, regardless of kind or class of work, or sex of workers, shall employ not less than eighty (80) per cent qualified electors or native-born citizens of the United States or some sub-division thereof.

"SEC. 2. Any company, corporation, partnership, association or individual, their agent or agents, found guilty of violating any of the provisions of this Act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than one hundred ($100.00) dollars, and imprisoned for not less than thirty (30) days.

"SEC. 3. Any employee who shall misrepresent, or make false statement, as to his or her nativity or citizenship, shall, upon conviction thereof, be subject to a fine of not less than one hundred ($100.00) dollars, and imprisoned for not less than thirty (30) days."

At said election said measure did, as your complainant is informed

and believes and therefore alleges the fact to be, receive in its favor and for its approval, a majority of the votes cast upon the question so submitted; under the provisions of Sub-division 13, Section 1, of Article IV of the Constitution of the State of Arizona, it is provided that it shall be the duty of the Secretary of State, in the presence of the Govenor and the Chief Justice of the Supreme Court of said State, to canvass the votes for and against such measure
4 within thirty days after the said election, and upon the completion of the canvass the Governor shall forthwith issue a proclamation, giving the whole number of votes case for and against such measure, and to declare the said measure, the same being approved by a majority of those voting thereon, to be law. Said requirements have been complied with, and said proclamation of the Governor of said State, in accordance therewith, has been made, the proclamation having been issued on the 14th day of December, 1914, and said measure is now a law within and of said State.

5. On the 9th day of December, 1914, said Truax did inform complainant that as soon as said pretended law should be proclaimed, and solely by reason thereof, and because he feared to incur its penalties if he should violate the terms thereof, he would discharge complainant from his employment aforesaid. Complainant further avers that said defendant Truax will, unless restrained by an order of this court, carry out his said intention to discharge complainant, and that such discharge will be made solely for the reason that complainant is neither a native-born citizen of the United States, nor a qualified elector within the meaning of said law, and because he is an alien.

6. Complainant further avers on information and belief that but for the passage of said pretended law, and but for its apparent sanction and force as a law of the State of Arizona, and but for the fact that said Act by its terms inflicts a heavy penalty upon any employer violating the same, and but for the fear said defendant Truax has that the penalties thereof will be visited upon him, in case of any violation thereof, this complainant would not be disturbed in his said employment and would continue therein and continue to enjoy his salary and wage for such service, and that the grounds and reasons aforesaid are the only grounds and reasons existing, and upon which said defendant Truax will act in discharging this complainant from his service aforesaid, and that the services of complainant are entirely satisfactory to said
5 Truax, and that he would in fact continue complainant in his said employment if such Act had not been so adopted, because he would prefer the services of complainant to those of any other employee it is not possible or practicable to en-age to perform the services now being performed by complainant, as herein alleged.

7. Further complainant your orator avers, that he is skilled in the work of his said employment, which skill he has gained by many years of experience therein and that on account of the special nature and character of his duties as cook aforesaid, and by reason of the many years of his life devoted to familiarizing himself with

the special duties and services incident to such position and employment, he has in a large measure unfitted himself to take up any new branch of work, and that the character of said employment is such that unless the employers from whom he may seek employment do in fact employ a large number of workers, and particularly are engaged in the business of a restaurant, that all the skill and competence now possessed by complainant in the performance of his duties as restaurant cook will be of *a* little aid or assistance to him in obtaining employment in other lines of work, and to a large extent will be a detriment and disadvantage to him rather than a help in gaining other employment.

8. That by reason of the premises your orator will be in a substantial manner deprived of his right to contract for the sale of his labor as a cook upon the same terms as are permitted to others who are native-born citizens, or qualified electors within the meaning of said pretended law; and his right to engage freely in said avocation without unjust or illegal discrimination will be taken from him *l* and that he will by the threatened act of said defendant Truax, if consummated, and by reason of the effect such law will have in coercing other employers of the kind of labor performed by him not to employ complainant in his said occupation, and complainant by reason of the premises will suffer irreparable
6 injury and damage, and that the amount of damages are now and will be incapable of any exact determination.

9. Further complaining your orator avers, that the said pretended law is unconstitutional, null and void, because the same is repugnant to the Fourteenth Amendment to the Constitution of the United States, and repugnant more particularly to that clause of said amendment which provides, that no State shall deprive any person of life, liberty or property without due process of law, and particularly to that clause of said amendment which prohibits any State from denying to any person within its jurisdiction the equal protection of the laws; that said pretended law is repugnant to and in violation of the provisions of Sec. 1979 of the Revised Statutes of the United States, in that it pretends to justify the said defendant Truax, and does colorably warrant the said defendant Truax, in depriving this complainant of the right, privilege and immunity secured to him by the Constitution and laws of the United States, to-wit: the right, privilege and immunity, without discrimination as an alien, to be employed in the lawful employment of which he is now threatened to be deprived by said defendant Truax. Said pretended law is further repugnant to the Fourteenth Amendment of the Constitution of the United States in that it is in letter and spirit calculated to deprive and will deprive this complainant and all others in like situation with him of the right freely to contract for the sale of their said labor, of the right to certain employment and of the right to life, and liberty within the meaning of said Fourteenth Amendment.

10. Complainant avers, that this suit is authorized by law to be brought by him to redress his deprivation, under the color of a law

and statute of a State, of the right, privilege and immunity secured to him by the Constitution of the United States, and by the laws of the United States within the meaning of Sub-division 14 of Section 24 of an Act of Congress of March 3, 1911, being an Act to codify, modify and amend the laws relating to the judiciary.

7 11. Your complainant further avers, upon information and belief, that there are many persons residing in the State of Arizona who are neither native-born citizens, nor qualified electors within the meaning of said pretended law, who will, if said law be enforced, lose their employment by reason thereof, and that the question to be determined herein is one of common and general interest to the many persons constituting such class, being the class hereinabove mentioned, to which complainant belongs and who are so numerous as to make it impracticable to bring them all before the Court, for which reason this complainant sues for all such persons in like situation with himself, as aforesaid pursuant to Equity Rule 38 of the United States Supreme Court.

12. Further complaining your orator avers that the said Wiley E. Jones, Attorney General of said State, and the said W. G. Gilmore, County Attorney of Cochise County, will, unless restrained from so doing by an order of this Honorable Court, institute proceedings in the Courts of the State of Arizona to enforce said pretended law, and the said W. G. Gilmore will and must institute proceedings in the Superior Court of the County of Cochise, State of Arizona, against said defendant Truax, in the event of the violation of said law by said Truax, and that under the laws of said State it is made the positive duty of said officers to prosecute to judgment and c .viction said defendant Truax in the event of a violation of said law, and in the event that he refuses to comply with said pretended law, and that by reason of the fear of said defendant Truax that he will be so prosecuted, said defendant Truax rather than to incur said penalties will discharge complainant from his said employment, under color of said law and statute.

In consideration whereof and forasmuch as complainant has no adequate remedy at law and can only have relief in a court of equity, where such matters are peculiarly cognizable, he

8 prays:

First. That the aforesaid statute of the State of Arizona, enacted and to be proclaimed as aforesaid and hereinbefore set out, he declared to be in violation of an- in contravention of the rights of this complainant and the persons for whom he sues under the Fourteenth Amendment to the Constitution of the United States.

Second. That the defendant Truax be temporarily and permanently enjoined from in any way or manner, by reason of the apparent force of said law, discharging this complainant from his service, and from carrying out his intention and threat so to do, already made as in this bill alleged.

Third. That the said Wiley Jones, Attorney General, and the said W. G. Gilmore, County Attorney of Cochise County, their, and each of their successors, assistants, deputies, agents and employees be

temporarily and permanently enjoined from in any way or manner enforcing against said defendant Truax or attempting to enforce, the provisions of the aforesaid statute, or any part thereof, and from instituting or causing to be instituted any suit, prosecution or proceeding to enforce, as against said defendant Truax, the aforesaid statute, or any of the provisions thereof.

Fourth. That a temporary restraining order be granted before the hearing and determination of the application herein made for an interlocutory injunction, because of the fact as alleged herein that irreparable loss and damage would result to this complainant unless such temporary restraining order be granted.

Fifth. That complainant have such other and further relief as is just and equitable, as well as a decree for costs.

Sixth. And may it please Your Honors to grant unto complainant a writ of subpœna of the United States of America, issued our of and under the seal of this Honorable Court, directed to the said William Truax, Sr., Wiley Jones, Attorney General aforesaid, and W. G. Gilmore, County Attorney aforesaid, therein to be named and under a certain penalty to be and appear before this
9 Honorable Court, then and there to answer, but not under oath (the answer under oath being expressly waived) all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises, and complainant will ever pray, etc.

WILLIAMS & FLANIGAN,
Solicitors for Complainant.

STATE OF ARIZONA,
County of Cochise, ss:

I, Mike Riach, upon oath says: I am the complainant in the above entitled bill and am familiar with the matter and things mentioned in said bill, which I have read; and I know the contents thereof and the same are true upon information and belief and as to those matters I believe them to be true.

MIKE RAICH.

Subscribed and sworn to before me this 14th day of December, 1914.

[SEAL.] P. J. FITZPATRICK,
Notary Public.

My commission expires Feby. 20, 1916.

* * * * * * *

[Endorsements:] No. E-9 (Tuscon). In the District Court of the United States for the District of Arizona. Mike Riach, Complainant, vs. William Truax, Sr., Wiley Jones, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Defendants. In Equity. Filed Dec. 15, 1914 at 4:45 P. M. George W. Lewis, Clerk. By Effie D. Botts, Deputy.

10 In the District Court of the United States in and for the District of Arizona.

MIKE RIACH, Plaintiff,
vs.
WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Defendants.

STATE OF ARIZONA,
County of Maricopa, ss:

Amos E. Egly, being first duly sworn deposes and says that he is a resident of the City of Phoenix, County of Maricopa, Arizona, that he is over the age of twenty-one years, and is not interested in the subject matter of the above entitled action or connected with any of the parties thereto; that on the 24th day of December, 1914, at the city of Phoenix, County of Maricopa, State of Arizona, he served upon the Attorney General of the State of Arizona a notice, a copy of which notice is hereby attached and made a part of this affidavit, and that said service was made by delivering said notice to Leslie C. Hardy, Esq., Assistant Attorney General of the State of Arizona.

AMOS E. EGLY.

Subscribed and sworn to before me this 24th day of December, 1914.

[SEAL.] O. T. RICHEY,
Notary Public.

My Commission expires April 25th, 1916.
[Revenue Stamp 10c.]

11 In the District Court of the United States in and for the District of Arizona.

In Equity, No. E-9 (Tucson).

MIKE RIACH, Plaintiff,
vs.
WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Defendants.

Notice.

To William Truax, Sr., Wiley E. Jones, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, and to Hon. G. W. P. Hunt, Governor of Arizona:

You, and each of you, will take notice that the plaintiff herein, by his attorneys, will make application to the Honorable Judge of

the District Court of the United States in and for the District of Arizona, sitting at Tucson, Arizona, on the 31st day of December, 1914, at the Court House, in the City of Tucson, Arizona at 9:30 A. M. on said day for an interlocutory injunction herein restraining the defendants above named, and each of them from in any manner enforcing, or attempting to enforce, the provisions of a certain act initiated by the people of Arizona under the provisions of Section one of Article four of the Constitution of the State of Arizona, entitled, "An act to protect the citizens of the United States in their employment against non-citizens of the United States in Arizona, and to provide penalties and punishments for the violation thereof", which initiated measure was, at an election
12 held in said State on the 3rd day of November 1914, adopted by the qualified voters of said State, and subsequently on the fourteenth day of December 1914, proclaimed by the Governor of the State of Arizona as law, and according to the Bill of Complaint herein a copy of which was heretofore served upon you.

And that at the same time and place and pending the hearing and determination of said application for an interlocutory injunction, the plaintiff will ask that a temporary restraining order issue herein under the provisions of Section 266 of the Judicial Code of the United States.

Dated at Tucson, Arizona, this 23rd of December, 1914.

WILLIAMS & FLANNAGAN,
JOHN H. CAMPBELL,
Attorneys for Plaintiff.

* * * * * * *

[Endorsements:] In Equity No. E-9 (Tucson). In the District Court of the United States in and for the District of Arizona. Mike Raich, Plaintiff, vs. William Truax, sr., et al., Defendants. Notice. Filed Dec. 26, A. D., 1914. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk.

13 In the District Court of the United States in and for the District of Arizona.

MIKE RIACH, Plaintiff,
vs.
WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Defendants.

STATE OF ARIZONA,
County of Maricopa, ss:

Amos E. Egly, being first duly sworn deposes and says that he is a resident of the City of Phoenix, County of Maricopa, Arizona, that he is over the age of twenty-one years, and is not interested in the subject matter of the above entitled action or connected with any of the parties thereto; that on the 24th day of December, 1914,

he served upon the Honorable George P. Hunt, Governor of the State of Arizona, in the City of Phœnix, a notice, copy of which notice is hereby attached and made a part of this affidavit; and that at the time of the said service of said notice he also served upon the Honorable George P. Hunt, Governor of the State of Arizona, in the city of Phoenix, a copy of the bill of complaint herein.

AMOS E. EGLY.

Subscribed and sworn to before me this 24th day of December, 1914.

O. T. RICHEY,
Notary Public.

[SEAL.]

[Revenue Stamp 10c.]

My commission expires April 25th, 1918.

14 In the District Court of the United States, in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RIACH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Defendants.

Notice.

To William Truax, Sr., Wiley E. Jones, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, and to G. W. P. Hunt, Governor of Arizona:

You, and each of you, will take notice that the plaintiff herein, by his attorneys, will make application to the Honorable Judge of the District Court of the United States in and for the District of Arizona, sitting at Tucson, Arizona, on the 31st day of December, 1914, at the Court House, in the City of Tucson, Arizona, at 9:30 A. M. on said day for an interlocutory injunction herein restraining the defendants above named, and each of them from in any manner enforcing, or attempting to enforce, the provisions of a certain act initiated by the people of Arizona under the provisions of Section one of Article four of the Constitution of the State of Arizona, entitled, "An Act to protect the Citizens of the United States in their employment against non-citizens of the United States in
15 Arizona, and to provide penalties and punishments for the violation thereof", which initiated measure was, at an election held in said State on the 3rd day of November, 1914, adopted by the qualified voters of said State, and subsequently on the fourteenth day of December 1914, proclaimed by the Governor of the

State of Arizona as law, and according to the Bill of Complaint herein a copy of which is herewith served upon you.

And that at the same time and place and pending the hearing and determination of said application for an interlocutory injunction, the plaintiff will ask that a temporary restraining order issue herein under the provisions of Section 266 of the Judicial Code of the United States.

Dated at Tucson, Arizona, this 23rd day of December, 1914.

WILLIAMS & FLANNAGAN,
JOHN H. CAMPBELL,
Attorneys for Plaintiff.

Endorsements: E.-9 (Tucson). In the District Court of the United States for the District of Arizona. Notice. Filed Dec. 26, 1914. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk.

16 In the District Court of the United States in and for the District of Arizona.

MIKE RIACH, Plaintiff,
vs.
WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Defendants.

UNITED STATES OF AMERICA,
District of Arizona, ss:

John S. Williams, being first duly sworn upon his oath, deposes and says that he is a citizen of the United States, over the age of twenty-one years of age, a resident of the Town of Warren, Arizona; that on the 24th day of December, 1914, he made service of a notice, a copy of which is hereto attached, upon the defendants William Truax, Sr., and W. G. Gilmore, County Attorney of Cochise County, by delivering to each of them a true, full and complete copy of said notice.

JNO. S. WILLIAMS.

Subscribed and sworn to before me this 31st day of December, 1914.

[SEAL.]

GEORGE W. LEWIS,
Clerk U. S. District Court, District of Arizona.
By EFFIE D. BOTTS,
Deputy.

17 In the District Court of the United States in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RIACH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Defendants.

Notice.

To William Truax, Sr., Wiley E. Jones, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, and to Hon. G. W. P. Hunt, Governor of Arizona:

You, and each of you, will take notice that the plaintiff herein, by his attorneys, will make application to the Honorable Judge of the District Court of the United States in and for the District of Arizona, sitting at Tucson, Arizona, on the 31st day of December, 1914, at the Court House, in the City of Tucson, Arizona, at 9:30 A. M. on said day for an interlocutory injunction herein restraining the defendants above named, and each of them from in any manner enforcing, or attempting to enforce, the provisions of a certain act initiated by the people of Arizona under the provisions of Section one of Article four of the Constitution of the State of Arizona, entitled, "An Act to protect the citizens of the United States in their employment against non-citizens of the United States in
18 Aricona, and to provide penalties and punishments for the violation thereof," which initiated measure was, at an election held in said State on the 3rd day of November, 1914, adopted by the qualified voters of said State, and subsequently on the fourteenth day of December, 1914, proclaimed by the Governor of the State of Arizona as law, and according to the Bill of Complaint herein a copy of which was heretofore served upon you.

And that at the same time and place and pending the hearing and determination of said application for an interlocutory injunction, the plaintiff will ask that a temporary restraining order issue herein under the provisions of Section 266 of the Judicial Code of the United States.

Dated at Tucson, Arizona, this 23rd day of December, 1914.

WILLIAMS & FLANNIGAN,
JOHN H. CAMPBELL,
Attorneys for Plaintiff.

Received a copy of the within notice this 24th day of December, 1914.

W. G. GILMORE.

Endorsements: E-9 (Tucson). Mike Riach, plaintiff, vs. Wm. Truax, Sr., et al, Defendants. Notice. Filed Dec. 31, 1914. George W. Lewis, Clerk, By Effie D. Botts, Deputy.

19 In the District Court of the United States in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RAICH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Defendants.

STATE OF ARIZONA,
County of Pima, ss:

John S. Williams, being first duly sworn, upon his oath deposes and says that he is over the age of twenty-one years, and one of the attorneys of record for the plaintiff in this case; that since the service of notice of the application for temporary restraining order in the above entitled action upon the defendants was made, the defendant William Truax has been arrested upon the complaint of one F. J. Perry, charging him with a violation of the so-called "Eighty Per Cent Law", and that said complaint was prepared by one of the assistants of W. G. Gilmore, County Attorney within and for the County of Cochise, State of Arizona, acting as and for the said Gilmore, as County Attorney aforesaid, a certified copy of said complaint and warrant being attached hereto and made a part hereof;

That this affiant is informed and verily believes, and therefore alleges the fact to be that the said prosecution and arrest were made at the instance of the County Attorney of Cochise County,
20 and other persons, for the purpose of harrassing and co-ercing the said William Truax to discharge from his employment the complainant, Mike Riach, and affaint further avers, upon information and belief, that unless restrained by this honorable Court, the said Gilmore and his assistants, and the said Wiley E. Jones, and his assistants, will cause said Truax to be repeatedly arrested, and will continue to harrass and coerce the said Truax, and will cause the said Truax to incur such expense and loss of time in defend*ant* such actions that the said Truac will discharge the complainant herein in order to protect himself against further prosecutions under said law, and that if the said William Truax does in fact discharge the said Riach, by reason of said prosecution so made, or in fear of repeated prosecutions threatened to be made, the said Riach will be left without remedy in his said action, and will suffer great and irreparable damage and injury, and said Riach will suffer irreparable damage and injury before the application for an interlocutory injunction can be heard, unless a temporary restraining order be granted herein.

JNO. S. WILLIAMS.

Subscribed and sworn to before me this 31st day of December, 1914.

[SEAL.] MAUDE I. BOWEN,
Notary Public.

My Commission will expire September 26, 1916.

21 In the Justice Court, Number Two Precinct, County of Cochise, State of Arizona.

Before Me, M. C. High, Justice of the Peace in and for Said Precinct.

STATE OF ARIZONA, Plaintiff,
vs.
WM. TRUAX, Defendant.

Criminal Complaint.

STATE OF ARIZONA,
County of Cochise, ss:

On the 29th day of December, A. D., 1914, personally appeared before me, a Justice of the Peace, F. J. Perry, who being first duly sworn, complains and says: That on or about the 28th day of December, A. D., 1914, in the County of Cochise, State of Arizona, one William Truax, then and there was the employer of more than five workers at one time, in the said Precinct, County and State, and that he the said William Truax, did then and there wilfully and unlawfully, and while he was the employer of more than five workers, as aforesaid, employ of such workers less than eighty per cent made up of qualified electors and native born citizens of the United States or some subdivision of the United States, all of which is contrary to the form of statutes in such cases made and provided and against the peace and dignity of the State of Arizona.

Said complainant therefore prays that a warrant may be issued for the arrest of said William Truax, and that he be dealt with according to law.

F. J. PERRY.

Subscribed and sworn to before me this 29th day of De-
22 cember, A. D., 1914.

M. C. HIGH,
Justice of the Peace in and for said Precinct in said County.

Endorsements No. E-9 (Tucson). In the District Court of the United States in and for the District of Arizona. Mike Riach, plaintiff, vs. William Truax, Sr., et al, Defendants. Affidavit. Filed Dec. 31, 1914. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. John S. Williams, Bisbee, Arizona, Attorney for Plaintiff.

23 In the District Court of the United States for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RAICH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Defendants.

Order.

This is an application for a temporary restraining order pending the application for an interlocutory injunction to be presented to three Federal Judges, as provided by Section 266 of the Judicial Code.

It is alleged that the plaintiff is a native of Austria, and that he is in the employ of Truax, one of the defendants herein, as a laborer in the restaurant business in the City of Bisbee, Arizona; that Truax is willing and anxious to retain him in his employ, but that the Attorney General of the State of Arizona and the County Attorney of Cochise County threaten to prosecute the said Truax because of his employment of plaintiff under the provisions of an Act adopted by the people of Arizona at the last general election held in said State, entitled "An Act to protect the citizens of the United States in their employment against non-citizens of the United States, in Arizona, and to provide penalties and punishments for the violation thereof," which is commonly known and called the "Eighty per cent law."

24 It is also alleged in the complaint that if the said Truax is compelled by prosecution under the law to discharge plaintiff that he, plaintiff, will suffer irreparable injury, and that the said Act is violative of plaintiff's rights under the constitution and laws of the United States; that the equal protection of the laws declared by the Fourteenth Amendment to the Constitution of the United States, and enforced by the laws of the United States, is not confined to the citizens of the United States, but secures to every person within the jurisdiction of the State of Arizona exemption from any burdens except such as are equally laid upon all others under like circumstances.

It is not denied that the State intends to enforce the law against all persons within its borders; the insistence is made that the Act in question is a valid exercise of the police and legislative power of the State.

As the questions of the constitutionality and validity of the Act, and the right of complainant to an interlocutory injunction suspending or restraining the enforcement, operation or execution of this statute are to be heard before the tribunal provided for by Section 266 of the Judicial Code, it would be manifestly improper to consider them here.

The plaintiff is working for wages, and his discharge would stop his wages, and might impose hardships on him much greater than any inconvenience that might come to the State from any postponement of the proceedings against Truax until the said application for an injunction can be heard. This application is by order of this Court set down for hearing before three judges as provided by Section 266 of said Judicial Code.

In view of the injustice which, should the law be held invalid, would result to complainant, should he be deprived of his employment and be left without means of support, it is deemed that the situation is such that a temporary restraining order should issue in this case, and it is so ordered, and the clerk will enter the following order;

This cause coming on regularly to be heard upon the application of Mike Raich, the complainant herein, for a temporary restraining order, by his solicitors, Williams and Flanigan and John H. Campbell, and the appearance of the defendant Truax herein having been entered, and the Attorney General, Wiley E. Jones, appearing in person, and by Leslie E. Hardy, Esq., Assistant Attorney General, and the defendant William G. Gilmore, appearing by the said Wiley E. Jones, Esq., William B. Cleary, Esq., also appearing as counsel herein, and due notice for hearing of said application having been served upon the defendants, and each of them, together with George W. P. Hunt, Governor of the State of Arizona, and all parties being represented in court as aforesaid, upon argument of counsel had and the court being fully advised in the premises,

It is ordered, adjudged and decreed:

That a temporary restraining order issue out of this court directed to the defendants Wiley E. Jones, Attorney General, and W. G. Gilmore, County Attorney of Cochise County, their and each of their successors, assistants, deputies, agents and employees, restraining them and each of them from in any way or manner enforcing against the said defendant Truax, or in attempting to enforce against said defendant Truax the provisions of that certain Act initiated by the people of the State of Arizona under the provisions of section one of article four of the Constitution of the State of Arizona, and thereafter at an election held on the third day of November, 1914, duly adopted by the people of Arizona, and thereafter, on the fourteenth day of December, 1914, declared by the Governor of the State of Arizona the law, commonly known as "The Eighty Per Cent Law", and entitled "An Act to Protect the Citizens of the United States in Their Employment Against Non-Citizens of the United States, in Arizona, and to Provide Penalties and Punishments for the Violation Thereof," and the said Wiley E. Jones, Attorney General, his successors, assistants, deputies, agents and employees, and the said W. G. Gilmore, County Attorney for Cochise County, his successors, assistants, deputies, agents and employees, be and they are hereby, and until further order of this court, restrained and enjoined from in any way or manner whatsoever enforcing against the said defendant Truax, or in attempting in any manner to enforce, the provisions of the

aforesaid statute, or any part thereof, and from instituting or causing to be instituted any suit, prosecution or proceeding to enforce as against the said defendant Truax, the provisions of the aforesaid statute, or any part thereof, or from further prosecuting or proceeding in any prosecution already instituted against the said Wiliam Truax, for violation of the provisions of said law, or any part thereof.

Done in open Court at Tucson, Arizona, this thirty-first day of December, 1914.

WM. H. SAWTELLE, *Judge.*

Endorsements: No. E-9 (Tucson). In the District Court of the United States for the District of Arizona. Mike Raich, Plaintiff, vs. William Truax, Sr., et al, Defendants. Order. Filed Dec. 31, 1914. George W. Lewis, Clerk.

27 In the District Court of the United States in and for the District of Arizona. In Equity.

No. E–9 (Tucson).

MIKE RIACH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

Stipulation.

It is hereby stipulated by and between the solicitors for plaintiff and defendants, that the application for an interlocutory injunction in the above entitled cause may be heard before the Honorable Judge of this District and such other Judges as he may call to his assistance, as provided by section 266 of the Judicial Code of the United States without this District, and in the State of California, on the fifth day of January, 1915, or as soon thereafter as said motion for an interlocutory injunction can be heard.

Dated at Tucson, Arizona, this thirty-first day of December, 1914.

WILLIAMS & FLANIGAN,
JOHN H. CAMPBELL,
Solicitors for Plaintiff.
WILEY E. JONES,
Attorney General of Arizona, Appearing in propria persona and as Solicitor for William Truax, Sr., and W. G. Gilmore, the Remaining Defendants.

Endorsements: No. E-9 (Tucson). In the District Court of the United States in and for the District of Arizona. Mike Riach,

Plaintiff, vs. Wm. Truax, Sr., et al., Defendants. Stipulation. Filed January 2, 1915. George W. Lewis, Clerk, by Effie D. Botts, Deputy Clerk. Williams & Flanigan and John H. Campbell, Tucson, Arizona, Attorneys for Plaintiff.

28 In the District Court of the United States, in and for the District of Arizona. In Equity.

No. E–9 (Tucson).

MIKE RIACH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

Motion to Dismiss.

Come now the defendants and by their solicitors move this Honorable Court to dismiss the Bill of Complaint filed herein, for that:

I.

The suit is in truth and effect one against the State of Arizona, without its consent to be sued.

II.

The suit seeks to enjoin the enforcement of a Criminal Statute of the State of Arizona, contrary to the powers of a Court of Equity.

III.

Plaintiff's Bill of Complaint does not state facts sufficient to constitute a cause of action in equity.

IV.

It appears from the face of Plaintiff's bill, that there is an improper joinder of parties, and that plaintiff is not entitled to sue in his behalf for the relief prayed for in his bill of complaint.

Wherefore, defendants pray that plaintiff's bill of complaint be dismissed and that he take nothing by his cause of action, and for such other relief as to this court seems just and equit-

29 able in the premises;

And for their costs and disbursements in this behalf expended.

WILEY E. JONES,
Attorney General of Arizona, Appearing in propria persona and as Solicitor for the Remaining Defendants, with Whom is Associated:
LESLIE C. HARDY,
Ass't Attorney General of Ariz.
W. B. CLEARY,
Bisbee, Arizona.

Endorsements: In Equity No. E-9 (Tucson). In the District Court of the United States, in and for the District of Arizona. Mike Riach, Plaintiff, vs. Wiliam Truax, Sr., et al., Defendants. Motion to Dismiss. Service admitted this 2nd day of January, 1915. John H. Campbell, Solicitors for Plaintiff. Filed January 2, 1915. George W. Lewis, Clerk, by Effie D. Botts, Deputy.

30 In the District Court of the United States for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RAICH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

Order.

This cause coming on regularly to be heard before the Honorable William W. Morrow, a Circuit Judge of the Ninth Circuit of the United States, and Honorable William C. Van Fleet, District Judge of the Northern District of California, and Honorable William H. Sawtelle, District Judge of the District of Arizona, sitting as the District Court of Arizona, under the provisions of Section 266 of the Judicial Code of the United States, at the Court room of the Circuit Court of Appeals of the Ninth Circuit of the United States in the City of San Francisco, State of California, all parties to the record herein having entered their stipulation that said hearing be had in said State of California, and without the District of Arizona, upon the application of Mike Raich, the complainant herein, by his solicitors, Williams and Flannigan and John H. Campbell, Esquire, for an Interlocutory Injunction herein, and the defendant Truax appearing by Pillsbury, Madison and Sutro, his solicitors, and Wiley E. Jones, Attorney General of the State of Arizona, appearing in person and by Leslie E. Hardy, Esquire, Assistant Attorney General of the State of Arizona, and the defendant William G. Gilmore appearing by the said Wiley E. Jones, Esq., and William B. Cleary, Esq., also appearing as counsel herein, and due notice of
31 hearing of said application having been served upon the defendants, and each of them, together with George W. P. Hunt, Governor of the State of Arizona, and all parties being represented in court as aforesaid, upon argument of counsel had and the court being fully advised in the premises,

It is ordered, adjudged and decreed:

That an interlocutory Injunction issue out of this Court directed to the defendants Wiley E. Jones, Attorney General, and W. G. Gilmore, County Attorney of Cochise County, their and each of their successors, assistants, deputies, agents and employees, restraining them and each of them from in any way or manner enforcing

against said defendant Truax, or in attempting to enforce against the said defendant Truax the provisions of that certain Act initiated by the people of the State of Arizona under the provisions of Section One of Article Four of the Constitution of the State of Arizona, and thereafter, at an election held on the third day of November, 1914, duly adopted by the people of Arizona, and thereafter, on the fourteenth day of December, 1914, declared by the Governor of the State of Arizona the law, commonly known as the "Eighty Per Cent Law," and entitled "An Act to Protect the Citizens of the United States in Their Employment Against Non-Citizens of the United States, in Arizona, and to Provide Penalties and Punishments for the Violation Thereof", and the said Wiley E. Jones, Attorney General, his successors, assistants, deputies, agents and employees, and the said W. G. Gilmore, County Attorney of Cochise County, his successors, assistants, deputies, agents and employees, be and they are hereby restrained and enjoined from in any way or manner whatsoever enforcing against the said defendant Truax, or
32 in attempting in any manner to enforce, the provisions of the aforesaid statute, or any part thereof, and from instituting or causing to be instituted any suit, prosecution or proceeding to enforce as against the said defendant Truax, the provisions of the aforesaid statute, or any part thereof, or from further prosecuting or proceeding in any prosecution already instituted against the said William Truax, for violation of the provisions of said law, or any part thereof.

Done in open Court at the City of San Francisco, California, this seventh day of January, 1915.

WM. W. MORROW,
Judge of the United States Circuit Court Of Appeals for the Ninth Circuit.
WM. C. VAN FLEET,
Judge of the United States District Court for the Northern District of California.
WM. H. SAWTELLE,
Judge of the United States District Court for the District of Arizona.

Endorsements: No. E-9 (Tucson). In the District Court of the United States for the District of Arizona. Mike Raich, Plaintiff, vs. William Truax, Sr., Wiley E. Jones, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Defendants. Order. Filed January 7th, 1915. George W. Lewis, Clerk.

33 In the District Court of the United States for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RAICH, Complainant,

vs.

WILLIAM TRUAX, Sr., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Respondents.

Before Circuit Judge William W. Morrow, and District Judges William C. Van Fleet and William H. Sawtelle, (Convened under the provisions of Section 266 of the Judicial Code, Act of March 3, 1911, Chapter 231; 36 Stat. 1162; U. S. Comp. St. Supp. 1911, page 236), Thursday, January 7, 1915.

John H. Campbell, of Tucson, Arizona, J. S. Williams and Edward J. Flannigan, of Bisbee, Arizona, for the Complainants.

Wiley E. Jones, Attorney General of the State of Arizona, Leslie C. Hardy, Assistant Attorney General of the State of Arizona, and William B. Cleary, of Bisbee, Arizona, for the Respondents.

SAWTELLE, *District Judge:*

This is an application for a temporary injunction pendente lite to restrain the Attorney General of the State of Arizona and the County Attorney of Cochise County, Arizona, from enforcing a law enacted by vote of the people of that State, under an initiative
34 petition, on November 3rd, 1914, upon the ground that the law is in violation of the Constitution of the United States, and the hearing thereof is had under Section 266 of the Judicial Code.

The Act in question is entitled, "An act to protect the citizens of the United States in their employment against non-citizens of the United States in Arizona, and to provide penalties and punishment for the violation thereof", and Section 1 thereof provides:

"Any company, corporation, partnership, association or individual who is, or may hereafter become an employer of more than five (5) workers at any one time, in the State of Arizona, regardless of kind or class of work, or sex of workers, shall employ not less than eighty per cent qualified electors or native-born citizens of the United States or some sub-division thereof."

By Section 2, violations of the Act on the part of employers are made misdemeanors and punishable by a fine of not less than one hundred dollars and imprisonment for not less than thirty days, and by Section 3, any misrepresentation or false statement by an employee as to his or her nativity or citizenship is made punishable by a fine of not less than one hundred dollars and imprisonment for not less than thirty days. The employment of more than twenty per cent of persons who are not qualified electors, or native born citizens of the United States, or of some sub-division thereof, by an

employer of labor who employs at any one time more than five persons, is not made an offense on the part of the alien so employed and no penalty attaches to him in consequence of his employment.

The complainant alleges that he is a native and subject of the Empire of Austria; that he is employed by the defendant Truax in a restaurant kept by the defendant Truax at Bisbee, Arizona;
35 that the defendant has in his employ more than five persons; that the said defendant is willing and anxious to retain the complainant in his employ but that the Attorney General of the State of Arizona, and the County Attorney of said Cochise County, threaten to prosecute the said defendant under the Act aforesaid; that if the defendant Truax shall be compelled by prosecution under said Act to discharge the complainant from his employ, he, the complainant, will suffer irreparable injury on account of his discharge, and that the Act in question is violative of the rights of the complainant under the Constitution of the United States in that it denies to him the equal protection of the laws which is guaranteed under the Fourteenth Amendment to all persons submitting themselves to the jurisdiction and laws of the United States, whether citizens or aliens.

On behalf of the State of Arizona, it is avowed by the Attorney General that the law in question will be enforced against all persons within its borders and that it is a valid exercise of the police powers of the State.

We think that the Act in question denies to the complainant the equal protection of the laws and is, therefore, in violation of the Fourteenth Amendment to the Constitution of the United States, and is void.

In the case of Yick Wo vs. Hopkins, 118 U. S. 356, the Supreme Court of the United States said:

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says, 'nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws.' These provisions are universal in their application
36 to all persons within the territorial jurisdiction, without regard to any difference of race, color or nationality, and the equal protection of the laws is a pledge of the protection of equal laws. * * * The Fourteenth Amendment was undoubtedly intended not only that there should be no arbitrary deprivation of life and liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition.

* * * and the rights of the complainant are not less because they are aliens and subjects of the Emperor of China."

The Constitution of California, adopted in 1879, contained a provision prohibiting any corporation from employing directly or indirectly any Chinese or Mongolians in any capacity, and the validity of this provision was attacked in the case of In re Tiburcio Parrott, 1 Fed. 481, and the Court there held,

"That the provision was in violation both of the Constitution and laws of the United States and the Treaty between the United States and the Empire of China",

And added that:

"In our country, hostile and discriminating legislation by a state against persons of any class, sect, creed or nation, in whatever form it may be expressed, is forbidden by the Fourteenth Amendment of the Constitution."

37 In the same case the opinion of Mr. Justice Swayne of the United States Supreme Court was quoted with approval that,

"Labor is property, and, as such, merits protection. The right to make it available is next in importance to the right of life and liberty. It lies, to a large extent, at the foundation of most other forms of property."

In the case of In Re Ah Chong, 2 Fed. 733, the constitutionality of a law enacted by the State of California prohibiting aliens who were incapable of becoming qualified electors from fishing in the waters of the state was called in question and the law was declared to be in violation of the Fourteenth Amendment of the Constitution and void.

In the case of Fraser vs. McConway & Torley Co., 82 Fed. 257, the United States Circuit Court for the District of Pennsylvania, in construing an Act of the Assembly of the State of Pennsylvania, approved the 15th day of June, 1897, which provides:

"That all persons, firms, associations or corporations employing one or more foreign born unnaturalized male persons over twenty-one years of age within this commonwealth, shall be and are hereby taxed at the rate of three cents per day for each day each of such foreign born unnaturalized male persons may be employed, which tax shall be paid into the respective county treasuries; one-half of which tax to be distributed among the respective school districts of each county, in proportion to the number of schools in said districts; the other half of said tax shall be used by the proper county authorities for defraying the general expenses of the county government. * * *

"That all persons, firms, associations and corporations shall have the right to deduct the amount of the tax provided for in this act from the wages of any and all employees, for the use of the proper county and school district as aforesaid,"

said:

"The court is here called upon to consider whether these provisions of this act of assembly are in conflict with the constitu-

tion or laws of the United States. The fourteenth amendment to the constitution of the United States declares:

38 " 'Nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' * * *

"Congress has enforced the above-quoted provisions of the fourteenth amendment by legislation embodied in sections 1977 and 1979 of the Revised Statutes. The former of these sections enacts: "All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property, as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.'

"It will be perceived that this statute, following in this regard the constitutional provisions themselves, embraces within its protection not citizens merely, but all 'persons' within the jurisdiction of the United States. The question of the extent of the application of these constitutional provisions with respect to persons was before the supreme court in Yick Wo v. Hopkins, 118 U. S. 356, 359, 6 Sup. Ct. 1064, and it was there decided that the guaranties of protection contained in the fourteenth amendment to the constitution embraced subjects of the emperor of China residing in the state of California. * * * There can be no doubt that the fourteenth amendment embraces the case of the present plaintiff, who although a British subject, is and since about April 27, 1893, has been, a resident of the State of Pennsylvania, and whose right to reside within the United States is secured to him by treaty between the United States and Great Britain. * * * The tax is of an unusual character, and is directed against and confined to a particular class of persons. Evidently, the act is intended to hinder the employment of foreign-born unnaturalized male persons over 21 years of age. The act is hostile to and discriminates against such persons. It interposes to the pursuit by them of their lawful avocations obstacles to which others, under like circumstances, are not subjected. It imposes upon these persons burdens which are not laid upon others in the same calling and condition. The tax is an arbitrary deduction from the daily wages of a particular class of persons. Now, the equal protection of the laws declared by the fourteenth amendment to the constitution secures to each person within the jurisdiction of a state exemption from any burdens or charges other than such as are equally laid upon all others under like circumstances."

In conclusion the Court says:

"I am of the opinion that the act of assembly of the state of Pennsylvania of June 15th, 1897, here in question, is in conflict with the constitution and laws of the United States, and cannot be sustained. The demurrer to the bill of complaint is therefore overruled."

39 Legislative enactments in several of the different states limiting or restricting the right of aliens therein have been tested in the State Supreme Courts and held to be violative of the Fourteenth Amendment to the Constitution of the United States and void.

In the case of State v. Montgomery, 47 Atlantic 165, decided May 28, 1900, by the Supreme Judicial Court of Maine, the constitutionality of Section 2, c. 298 of the Laws of 1889, as amended by chapters 282 and 306 of the Laws of 1893, was attacked. This statute relates to hawkers and peddlers, Section 1 thereof prohibiting the peddling of certain named classes of goods and chattels until the peddler shall have procured a license to do so, and said Section 2 providing that

"The Secretary of state shall grant a license" for peddling "to any citizen of the United States who files in his office a certificate signed by the mayor of a city, or by the majority of the selectmen of a town, stating to the best of their knowledge and belief that the applicant therein named is of good moral character; but such license shall be granted to no other person."

Under said Section 2, it follows that a citizen could obtain a hawker's or peddler's license, but an alien could not. The court, in an opinion reflecting exhaustive research on the question of constitutionality of enactments of this ilk, and after citing numerous decisions in support of the court's opinion that legislation of this category is obnoxious to the Fourteenth Amendment to the Constitution of the United States says:

40 "In the light of these interpretations of the fourteenth amendment, we are compelled to conclude that a statute which forbids peddling except under a license, and which provides that citizens of the United States may be licensed, and that aliens shall not be, is a denial of the 'equal protection of the laws'. It is, an unconstitutional discrimination against aliens. It does more than impose unequal burdens and charges upon the alien. It absolutely denies him the privilege of an occupation open to citizens, which is more than a discrimination in burdens. It does not permit the alien within our jurisdiction to pursue a business occupation, and to acquire and enjoy property on equal terms with the citizen. * * * Nor can this discrimination be sustained as constitutional exercise of the police power of the state. It must be noticed that the discrimination is not against a class, as criminals, as paupers, as intemperate, as disqualified by character or habits, or as harmful to society, but against a class solely as aliens. Such a dicrimination is forbidden."

In the case of Templar v. Michigan State Board of Examiners of Barbers, 90 N. W. 1058, the Supreme Court of the State of Michigan held that Act No. 212, Pub. Acts 1899, Par. 5, was repugnant to the fourteenth amendment to the Constitution of the United States as denying equal protection of the law in so far as it discriminates on account of citizenship.

Said Act provided for the examination and licensing of barbers. After designating various points upon which the applicant for the

license is to be examined, etc., the Act further provides that "no person so examined shall receive such certificate who at the time of such examination is an alien."

In that case the Attorney General contended that under the police power the legislature was vested with the right of regulating the professions, trades and callings, and that said Par. 5 of said Act, even if it should result in excluding aliens from privileges enjoyed by citizens, was still within the purview of the legitimate exercise of the police power. The court, in dealing with this contention, quoted the rule:

41 "When legislation applies to particular bodies or associations, imposing upon them additional liabilities and restrictions, under the police power of the state which are not purely arbitrary, the law does not violate the equal protection of Section 1 of the fourteenth amendment to the federal constitution, if all persons brought under its influence are treated alike, under the same conditions and circumstances."

"But," said the Court, "the difficulty with this enactment (meaning said Act. No. 212) is that all persons brought under the influence of this legislation are not treated alike, under the same conditions and circumstances. Before the enactment of this statute the plaintiff had the undoubted right to ply his trade in Michigan. In the exercise of police power the legislature had the undoubted right to require as a prerequsite to his plying his trade, that he submit to an examination. But had it the right to require citizenship? If it had the right to couple that with other requirements, it would have the same right to make that the only requirement. In other words, it would have the right to exclude alien labor wholly. * * * But in the present case, the relator's business is in no way injurious to the morals, the health or even the convenience of the Community, provided only he has the requisite knowledge upon the subjects prescribed by the legislature to practice his calling without endangering the health of his patrons. To hold that he is not entitled to practice this calling, because not a full citizen of the United States, is to deny him rights which we think are preserved by the fourteenth amendment."

In Ex Parte Case, 116 Pacific 1037, it was held by the Supreme Court of the State of Idaho that Section 1458 of the Rev. Codes of Idaho is repugnant to the Constitution and laws of the United States and void. Said Section 1458 provides:

"It shall hereafter be unlawful for any county government, or municipal or private corporation organized under the laws of the State or organized under the laws of another state or terrtiory or in a foreign count-y and doing business in this state, to give employment in any way to any alien who has failed, neglected or refused, prior to the time such employment is given, to become naturalized or to declare his intention to become a citizen of the United States."

In that case the complaint charged that petitioner, the superintendent of a private corporation, "knowingly gave employment to four aliens, regardless of the character of the work upon which they

were employed." After citing the cases of Yick Wo v. Hopkins, 118 U. S. 356, supra, Fraser v. McConway, 82 Fed. 257, supra,
42 and In Re Tiburcio Parrett, 1 Fed. 481, in support of the doctrine that "all persons within the territorial jurisdiction of the United States are within the protection of the fourteenth amendment of the Constitution, without regard to differences of race, color, or nationality", the Court said:

"A state Legislature by legislative enactment or otherwise has no authority to deprive a person of the right to labor at any legitimate business or to deny any person within the jurisdiction of the United States the equal protection of the laws, or to prohibit a corporation that has a right to do business in the state to employ any person whether alien or native, in the prosecution of any legitimate business."

In Ex Parte Kulbach, 24 Pacific 737, the unconstitutionality of the so-called "eight-hour" ordinance, which has been adopted by the City of Los Angeles, California, was determined by the Supreme Court of California.

Section 3 of said ordinance provided that "It shall be unlawful for any contractor by himself or through another, when having labor performed under any contract with the City, to employ Chinese labor thereon."

In referring to this ordinance, the Court used this language:

"It is claimed in support of the petition that this ordinance was unconstitutional and void. We think this objection is well taken. It is simply an attempt to prevent certain parties from employing others in a lawful business and paying them for their services, and is a direct infringement of the right of such persons to make and enforce their contracts."

In the case of City of Chicago, v. Hulbert, et al., 68 N. E. 786, the question of constitutionality was raised against Hurd's Rev. St. 1901, p. 141, c. 6, par. 10, which provides that "it shall be unlawful for any * * * officer * * * acting for * * * any city * * * or any contractor, or subcontractor, under any or either of said municipalities, to employ any person or persons, other than native born or naturalized citizens, or those who have in
43 good faith declared their intentions to become citizens of the United States, when such employees are to be paid in whole or in part, directly or indirectly, out of any funds raised by taxation."

The Supreme Court of Illinois in that case, holding said C. 6, par. 10, unconstitutional, speaking through Justice Ricks, said:

"A similar law was enacted by ordinance in the City of Chicago, and we have repeatedly held that such law is invalid, as it is in contravention to the constitution and the rights of individuals to contract. The statute in question is void upon the same grounds, and neither the City nor the contractor was under any obligation to observe it."

So, also, in the case of People v. Warren, 34 N. Y. Supp. 942, Laws 1870, c. 385 par. 2, as amended by Laws 1894, c. 622, which made it a crime for a contractor with a municipal corporation for

the construction of public works to employ an alien as laborer on said works, was held to be void on the grounds, among others, that it was violative of the treaty between the United States and the King of Italy, which provides that Italians resident in the United States shall enjoy the same rights and privileges as are secured to our own citizens, and that it was abrogative of rights, privileges and immunities guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The discrimination against aliens wrought by the said Act cannot be upheld as valid on the ground that it is a valid exercise of police regulation.

Judge Cooley, in his work on Constitutional Limitations 5th Ed. p. 745, in comprehensive yet succinct language, covers the entire domain of this particular contention: He says,

44 "The general rule undoubtedly is that any person is at liberty to pursue any lawful calling, and to do so in his own way, not encroaching upon the rights of others. This right cannot be taken away. It is not competent, therefore, to forbid and person, or class of persons, whether citizens or resident aliens, offering their services in lawful business, or to subject others to penalties for employing them. But here, as elsewhere, it is proper to recognize the distinctions that exist in the nature of things, and under some circumstances to inhibit employments to some one clas by leaving them open to others. Some employments, for example, may be admissible for males and improper for females, and regulations recognizing the impropriety and forbidding women engaging in them would be open to no reasonable objection. The same is true of young children, whose employment in mines and manufactories is commonly and ought always to be, regulated. And some employments, in which integrity is of vital importance, it may be proper to treat as privileges merely, and to refuse the license to follow them to any who are not reputable."

The case of The People of the State of New York v. Crane, decided by the Supreme Court, Appellate Division, of the State of New York, December, 1914, not yet published, involved the validity of that portion of Section 14 of the Labor Law of said State, which is as follows:

"In the construction of public works by the State or a Municipality or by persons contracting with the State or such Municipality, only citizens of the United States shall be employed; and in all cases where laborers are employed on any such public work, preference shall be given to citizens of the State of New York."

a violation of which Act is made a misdemeanor.

In that case the Court said:

"The appellant Clarence A. Crane was convicted of a misdemeanor for violation of the statute in that he employed aliens as laborers in the performance of a contract executed by the President of the Borough of Manhattan for the construction of a catch basin in connection with the public sewer system. * * * The particular

provision of the Act above quoted which has been discussed at bar is that which forbids the employment by persons engaged in the performance of work, under contracts with the State or a Municipality, of any except citizens of the United States, and it is that feature of the Act to which we shall direct our attention, and we shall commence our discussion by conceding, as is strongly urged upon us by the respondents, that the invalidity of an Act of the Legislature is not to be lightly declared, and that in order to find such an Act invalid upon constitutional grounds some definite provision must be found in the fundamental and paramount law with which the questioned enactment is at variance. The specific constitutional provision which is claimed to have been violated by the Act in question is that portion of the Fourteenth Amendment of the Constitution of the United States which reads as follows: 'No State shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.' It is settled law that the amendment is not confined to the protection of citizens, but that its provisions are universal in their application to all persons with the territorial jurisdiction, without regard to any difference of race, or color or of nationality, and the promise of equal protection of the laws is equivalent to a pledge of the protection of equal laws. (Yick Wo v. Hopkins, 118 U. S. 369). The rights thus secured to resident aliens, as well as to citizens, have been repeatedly held to extend to the right to contract, to pursue lawful callings, and to follow ordinary avocations, that no impediments should be interposed to the pursuits of any one, except such as are applied to the same pursuits by others under like circumstances. (Barbier v. Connelly, 113 U. S. 27). It was said by the same court in Missouri v. Lewis (101 U. S. 22) that: 'No person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or class in the same place and under like circumstances', and again in Hayes v. Missouri (120 U. S. 68): 'The Fourteenth Amendment requires that all persons subject to legislation limited as to the objects to which it is directed, or by the territory within which it is to operate, shall be treated alike under like circumstances and consideration both in the privileges conferred and in the limitations imposed.' Hence it may be said to be as firmly established as is any principle of constitutional law that one of the purposes and effects of the Fourteenth Amendment of the Federal Constitution was to forbid discrimination by any State between citizens and resident aliens, based solely upon the fact of alienage and non-alienage so far as concerns the right to enjoy life, liberty and the pursuit of happiness, and the equal protection of the laws. Among the rights guaranteed to every individual is that of freely contracting to render service and perform labor. 'The provisions of the State and of the Federal Constitutions protect every citizen in the right to pursue any lawful employment in a lawful manner. He enjoys the uttermost freedom to pursue his chosen pursuit and any arbitrary distinc-

tion against or deprivation of that freedom by the Legislature is an invasion of the constitutional guarantee.' (People v. Williams, 189 N. Y. 13). That the statutory provision now under consideration is frankly and baldly discriminatory requires no argument to establish. It forbids the employment of aliens upon all public works within the State, for no other reason than that they are aliens. On its face it appears to be directly in confiict with the Fourteenth Amendment. * * *

"It is sought to sustain the act as an exercise by the State of the police power, that well recognized but not easily defined power under which the State may and often does restrict the liberty of the individual for the safety and protection of the community. It is not easy, nor is it necessary to attempt, to precisely define the
46 scope and limitations of the police power, but it may be said generally to authorize such enactments as are deemed necessary for the protection of society and to guard its morals, safety, health and good order, but it is well recognized that in order to justify an Act as an exercise of the police power there must appear to be some obvious and real connection between the terms of the enactment and some of the purposes for the attainment of which the police power may be exercised. Consequently an Act which invades personal rights or private property cannot be justified under the police power unless there be some discernible relation between it and some legitimate object of police regulation. Whether or not any statute can be upheld as a valid exercise of the police power is also a proper subject for judicial inquiry. It was said in Colton v. Lisk (153 N. Y. 188): The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual or unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the Courts. (Lawton v. Steele, 152 U. S. 133, 137). * * *

"It seems to be quite clear that the provisions of the Labor Law now under consideration cannot be upheld on this ground. * * *

"We have heard and considered various arguments dealing with the sociological aspects of the case, and others dealing with somewhat far fetched suppositions as to the dire results that might be expected from the employment of aliens in constructing the subways in case this country should ever, unhappily, be engaged in war with some foreign country. Such arguments, in our opinion, afford no assistance to the solution of what is purely a legal question. Our conclusion therefore is that the provisions of Section 14 of the Labor Law quoted earlier in this opinion are violative of the Fourteenth Amendment of the Constitution of the United States and therefore void. Our attention has been called to the text of numerous treaties between the United States and foreign countries which, it is claimed, expressly forbid discriminating legislation of this character. In view of the conclusion we have reached upon the constitutional question, it is unnecessary to discuss any question arising under these treaties. * * *

"It seems to be conceded by all of the respondents that it would be incompetent for the Legislature to impose upon private persons or corporations not engaged in performing public work, such restrictions as are attempted to be imposed upon the City of New York as an arm of the State."

In this case the judgment of conviction against the defendant Crane was reversed and the defendant discharged.

In the case at bar the law in question is evidently not intended to be, and is not, a regulation within the police powers of the State. If, under the guise of enacting a police regulation, the state can
47 prohibit an employer from hiring more than twenty per cent of alien laborers, it can prohibit the employment of five per cent, and if it can prohibit the employment of more than five per cent aliens it can prohibit the employment of any aliens at all, and thus, under the guise of enacting a police regulation, nullify the Fourteenth Amendment to the Constitution of the United States as interpreted by the Supreme Court of the United States.

The bill is filed by the complainant in his own behalf and on behalf of all other similarly situated under Equity Rule 38, providing that:

"When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

But, manifestly, this rule does not apply to the case at bar, and therefore, under the facts stated in the bill, complainant cannot invoke this rule to sue as representing a class. As was recently said by the Supreme Court of the United States in the case of McCabe v. A. T. & S. F. Ry. Co., (not yet published):

"The complainant cannot succeed because some one else may be hurt. Nor does it make any difference that other persons, who may be injured, are of the same race or occupation. It is the fact, clearly established, of injury to the complainant—not to others—which justifies judicial intervention."

See also Scott v. Donald, 165 U. S. 107; and Engel v. O'Malley, 219 U. S. 128.

Under Section 24 of the Judicial Code, and the rule laid down by Judge Morrow in the case of Simpson, et al., v. Geary, et al., 204 Fed. 507, we hold an allegation of the amount in controversy is not necessary to give this court jurisdiction in this case.

We think the position taken by respondents that the institution of a criminal proceeding against the respondent Truax in the state courts will afford ample means of determining judicially the
48 rights of the complainant in the case at bar, is untenable. The complainant is not a party to any such criminal proceeding, nor can he be made a party thereto; nor can he be heard therein, nor can he be in any legal sense secure or require that his legal rights be determined therein. If he cannot secure his legal rights in a court of equity he cannot secure them at all for he is powerless to secure them in any legal proceedings that have been or can be instituted under this law and he cannot secure them in any action at

law for damages. It cannot be successfully contended that he has no legal rights. It is axiomatic that every man within the territorial jurisdiction is entitled to his day in court. This complainant can have no day in court save in a court of equity.

The general doctrine that a court of equity will not restrain the prosecution of criminal cases is well settled, but it is subject to the exception laid down in Ex Parte Young, 209 U. S. 123, that

"When such an indictment or proceeding is brought to enforce an alleged unconstitutional statute, which is the subject matter of inquiry in a suit already pending in a federal court, the latter court, having first obtained jurisdiction over the subject matter, has the right in both civil and criminal cases to hold and maintain such jurisdiction, to the exclusion of all other courts, until its duty is fully performed."

"It woud seem that, if there were jurisdiction in a court of equity to enjoin the invasion of property rights through the instrumentality of an unconstitutional law, that jurisdiction would not be ousted by the fact that the state had chosen to assert its powers to enforce such law by indictment or other criminal proceedings." Davis v. Farnum, 189 U. S. 207-218.

The Circuit Court of Appeals of the Ninth Circuit has also held that a court of equity has jurisdiction of a suit to enjoin the enforcement of a statute which affects property rights, although its violation is punishable as a criminal offense. Little v. Tanner, 208 Fed. 605-609.

49 In the case at bar the court acquired jurisdiction before any criminal proceedings were instituted against the defendant Truax and should under the rule in the Ex Parte Young Case, supra, maintain its jurisdiction to the exclusion of all criminal proceedings instituted against Truax in the state courts.

Counsel for respondents have urged with some emphasis that this cause should not be heard before this tribunal, but that the interpretation and determination of the questions involved should be left to the State courts. In this connection, it is pertinent to observe that this case involves the construction of a law enacted by vote of the people of the State of Arizona, and that at the time of the filing of the bill herein the Supreme Court of the State had not passed upon or construed the law, nor was there pending in any court of said State any proceeding or action involving the validity of the same. In Burges v. Seligman, 107 U. S. 20-33, the Supreme Court said:

"The Federal courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to, that of the State Courts, and are bound to exercise their own judgment as to the meaning and effect of those laws. The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all

the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate, and the construction of State constitutions and statutes. Such established rules are always, regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is. But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they always do in reference to the doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision, of the State tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued."

50 It cannot be gainsaid that this complainant had the right of election of a forum, in which to have his rights adjudicated. Having elected to bring his cause before this tribunal, it is the duty of this Court to hear the application and determine the issues involved. The rule to be followed by the Federal courts in cases of this character is clearly laid down by the Supreme Court of the United States in the case of Cohens v. Virginia, 19 U. S. 264-403:

"It is most true, that this court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction, if it should. The judiciary cannot, as the legislature may, avoid a measure, because it approaches the confines of the constitution. We cannot pass it by, because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur, which we would gladly avoid; but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty."

For these reasons the motion to dismiss this bill is denied and the application for an interlocutory injunction is granted.

Endorsements: In the District Court of the United States for the District of Arizona. Mike Raich, Complainant, vs. William Truax, Sr., Wiley E. Jones, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Respondents. In Equity No. E-9 (Tucson). Before Circuit Judge William W. Morrow, and District Judges William C. Van Fleet and William H. Sawtelle, (Convened under the provisions of Section 266 of the Judicial Code, Act of March 3, 1911, Chapter 231; 36 Stat. 1162; U. S. Comp. St. Supp. 1911, page 236). Thursday, January 7, 1915. Filed January 22, 1915. George W. Lewis, Clerk.

51 In the District Court of the United States, in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RIACH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

Petition for Appeal.

To the Honorable William H. Sawtelle, Judge of the United States District Court, for the District of Arizona:

The above named defendants, feeling aggrieved by the order rendered and entered in the above entitled cause on the 7th day of January, A. D., 1915, granting plaintiff's acceplication for an interlocutory injunction, appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. Defendants pray that this appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said order was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington in the District of Columbia, under the rules of that court in such cases made and provided.

WILEY E. JONES,
Attorney General of the State of Arizona, Appearing in propria persona, and as Solicitor for the Remaining Defendants.

Endorsements: In Equity No. E-9 (Tucson). In the District Court of the United States, in and for the District of Arizona. Mike Riach, Plaintiff, vs. William Truax, et al., Defendants. Petition for Appeal. Filed Jan. 20, A. D., 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy.

52 In the District Court of the United States, in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RIACH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

Order Allowing Appeal.

On motion of Wiley E. Jones, Esquire, Attorney General of the State of Arizona, appearing in propria persona, and as solicitor for the remaining defendants, it is hereby ordered that the appeal to the Supreme Court of the United States from the order granting plaintiff's application for an interlocutory injunction, heretofore filed and entered herein, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the Supreme Court of the United States.

Dated this 19th day of January, A. D., 1915.

WM. H. SAWTELLE,
Judge of the District Court.

Endorsements: In Equity No. E-9 (Tucson). In the District Court of the United States, in and for the District of Arizona. Mike Riach, Plaintiff, vs. William Truax, et al., Defendants. Order allowing appeal. Filed Jan. 20, A. D., 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy.

53 In the District Court of the United States, in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RIACH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

Assignment of Errors.

Now come William Truax, Sr., Wiley E. Jones, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, defendants, and make and file the following assignment of errors, upon their appeal to the Supreme Court of the

United States from the order of the District Court of the United States, in and for the District of Arizona granting plaintiff's application for an interlocutory injunction.

The District Court erred in granting the order for the interlocutory injunction in this case for the following reasons, to-wit:

I.

That plaintiff's bill of complaint and the affidavits filed in the above entitled cause showed insufficient grounds for an interlocutory injunction.

II.

That the suit is, in truth and effect, one against the State of Arizona, contrary to public policy, and without its consent to be sued.

54

III.

That the suit seeks to enjoin the enforcement of a criminal statute of the State of Arizona, contrary to the powers of a court of equity.

IV.

That plaintiff's bill of complaint does not state facts sufficient to constitute a cuase of action in equity.

V.

That it appears from the face of plaintiff's bill of complaint that plaintiff is not entitled to maintain his suit or to sue in his behalf for the relief prayed for in his bill of complaint.

VI.

That plaintiff's bill of complaint does not state facts sufficient to justify the relief granted, for the reason that the criminal statute complained of and the enforcement of which was enjoined, was the exercise of the police power of the State of Arizona, and not in contravention of the Constitution and laws of the United States.

Wherefore, defendants pray that said order be reversed, and the District Court of the United States, in and for the District of Arizona, be ordered to enter an order refusing plaintiff's application for an interlocutory injunction.

WILEY E. JONES,
Attorney General of the State of Arizona, Appearing in propria persona, and as Solicitor for the Remaining Defendants; with Whom is Associated:
LESLIE C. HARDY,
Assistant Attorney General of the State of Arizona, and
W. B. CLEARY.

Endorsements: In Equity No. E-9 (Tucson). In the District Court of the United States, in and for the District of Arizona. Mike Riach, Plaintiff, vs. William Truax, et al., Defendants. Assignment of Errors. Filed Jan. 20, A. D., 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk.

55 In the District Court of the United States, in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RIACH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

Order for Clerk to Certify Papers, Documents, Etc., to the Supreme Court of the United States.

Defendants, having made application for an appeal to the Supereme Court of the United States from the order of this Court granting plaintiff's application for an interlocutory injunction, and said appeal having been duly allowed by order of this Court, now on motion of Wiley E. Jones, Attorney General of the State of Arizona, appearing in propria persona and as solicitor for the remaining defendants.

It is ordered that the Clerk prepare and certify a transcript of the record in this case upon defendants' said appeal, and forward the same to the Clerk of the Supreme Court of the United States.

Dated this 19th day of January, A. D., 1915.

WM. H. SAWTELLE,
Judge of the District Court.

Endorsements: In Equity No. E-9 (Tucson). In the District Court of the United States, in and for the District of Arizona. Mike Riach, Plaintiff, vs. William Truax, et al., Defendants. Order for Clerk to certify papers, documents, etc., to the Supreme Court of the United States. Filed Jan. 20, A. D., 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk.

56 In the District Court of the United States, in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RIACH, Plaintiff,

vs.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

Praecipe for Transcript of Record on Appeal.

To George W. Lewis, Esquire, Clerk of the United States District Court, in and for the District of Arizona:

You will please, in accordance with the order and citation in the above entitled cause prepare a transcript of the record in this cause to be filed in the office of the Clerk of the Supreme Court of the United States, and include in said transcript on appeal the following pleadings, proceedings and papers on file, to-wit:

Bill of Complaint;
Motion to dismiss;
Opinion of Court on granting application for interlocutory injunction;
Petition for appeal;
Order allowing appeal;
Assignment of errors;
Citation on appeal and Clerk's certificate;
Notice of application for temporary restraining order and interlocutory injunction;
Order granting temporary restraining order;
Order granting interlocutory injunction;
57 Stipulation providing for hearing of application for interlocutory injunction in the State of California;
Affidavit of John S. Williams, subscribed and sworn to the 31st day of December, 1914;
Praecipe for transcript of record on appeal;
Order to certify transcript of record;
Affidavit of service of assignment of errors and citation on appeal.

Dated this 15th day of January, A. D., 1915.

WILEY E. JONES,
Attorney General of the State of Arizona, Appearing in propria persona, and as Solicitor for the Remaining Defendants.

Endorsements: In Equity No. E-9 (Tucson). In the District Court of the United States, in and for the District of Arizona. Mike Riach, Plaintiff, vs. William Truax, et al, Defendants. Praecipe for Transcript of Record on Appeal. Filed Jan. 20, A. D., 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk.

58 In the United States District Court for the District of Arizona.
District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RAICH, Plaintiff,
vs.
WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

UNITED STATES OF AMERICA,
District of Arizona, ss:

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing pages, number 1 to 57, inclusive, constitute and are a true, complete and correct copy of the record, pleadings, and proceedings had in the case of Mike Raich, Plaintiff, vs. William Truax, Sr., et al., Defendants No. E-9 (Tucson), as the same remain on file and of record in said District Court, and I also annex and transmit the original Citation, and Affidavit of Service of Citation and Assignment of Errors, in said action.

I further certify that the cost of preparing and certifyin- to said record amounts to the sum of $69.20, and that same has been paid in full by the appellants, William Truax, Sr., Wiley E. Jones, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States District Court for the District of Arizona at Tucson, in said District, this 6th day of February, in
59 the year of our Lord one thousand nine hundred and fifteen, and of the Independence of the United States of America, the one hundred and thirty-ninth.

GEORGE W. LEWIS,
Clerk United States District Court, District of Arizona.
By EFFIE D. BOTTS,
Deputy Clerk.

[Seal United States District Court, District of Arizona.]

60 In the District Court of the United States in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RIACH, Plaintiff,
vs.
WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Mike Riach, Plaintiff, and His Solicitors, Williams & Flannigan and John H. Campbell, Esquires, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, District of Columbia, within sixty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the District Court of the United States, in and for the District of Arizona, wherein William Truax, Sr., Wiley E. Jones, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona are defendants and you are plaintiff, to show cause, if any there be, why the error in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in their behalf.

Witness the Honorable William H. Sawtelle, United States District Judge, for the District of Arizona, this 19th day of January, A. D. 1915.

WM. H. SAWTELLE,
United States Judge for the District of Arizona.

61 [Endorsed:] In Equity. No. E-9 (Tucson). In the District Court of the United States in and for the District of Arizona. Mike Riach, Plaintiff, vs. William Truax, et al, Defendants. Citation on appeal. Filed Jan. 20 A. D. 1915 at — M. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk.

62 In the District Court of the United States, in and for the District of Arizona. In Equity.

No. E-9 (Tucson).

MIKE RIACH, Plaintiff,
vs.
WILLIAM TRUAX, SR.; WILEY E. JONES, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Defendants.

Affidavit of Service.

STATE OF ARIZONA,
County of Maricopa, ss:

Leslie C. Hardy first being duly sworn, upon his oath, deposes and says:

That he is an assistant attorney general of the State of Arizona and that, as such, on the 19th day of January, A. D. 1915 he caused to be mailed in an envelope properly addressed and stamped to John H. Campbell, Esquire, of counsel for the plaintiff in the above entitled cause of action, defendants' assignment of errors, together with citation on appeal to the Supreme Court of the United States in the above entitled cause.

Further affiant saith not.

LESLIE C. HARDY,

Subscribed and sworn to before me this 19th day of January, 1915.

WILLIE LOVETT,
Notary Public.

My commission expires June 18, 1917.

[Seal Willie Lovett, Notary Public, Maricopa County, Ariz.]

63 [Endorsed:] In Equity. No. E-9 (Tucson). In the District Court of the United States, in and for the District of Arizona. Mike Riach, Plaintiff, vs. William Truax, et al, Defendants. Affidavit of service. Filed Jan. 20 A. D. 1915 at — M. George W. Lewis Clerk. By Effie D. Botts Deputy Clerk.

Endorsed on cover: File No. 24,574. Arizona D. C. U. S. Term No. 830. William Truax, Sr., Wiley E. Jones, Attorney General of the State of Arizona, and W. G. Gilmore, County Attorney of Cochise County, Arizona, Appellants, vs. Mike Raich. Filed February 25th, 1915. File No. 24,574.

White Supreme Court, U. S.
APR 20 1915
JAMES D. MAHER
CLERK

Supreme Court

OF THE

United States

OCTOBER TERM, 1914.

No. [redacted] 361

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. GILMORE, County Attorney of Cochise County, Arizona,

Appellants,

Vs.

MIKE RIACH,

Appellee.

MOTION BY APPELLANTS TO ADVANCE.

J. ADDISON HICKS,

Of Counsel for Appellants.

Supreme Court of the United States

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. GILMORE, County Attorney of Cochise County, Arizona, Appellants, vs. MIKE RIACH, Appellee.	Stipulation and Agreement to Advance.

It is hereby stipulated and agreed by counsel for the respective parties hereto, that notice of motion to advance the above entitled cause is hereby waived, and that the Court may advance the above entitled cause for hearing at an early day convenient to the Court during the present term.

Dated this 12th day of April, A. D. 1915.

J. ADDISON HICKS,
Of Counsel for Appellants.

JOHN H. CAMPBELL,
Of Counsel for Appellee.

Supreme Court of the United States

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. GILMORE, County Attorney of Cochise County, Arizona, Appellants, vs. MIKE RIACH, Appellee.	Motion by Appellants to Advance.

Come now the appellants in the above entitled cause, the appellee consenting, as evidenced by stipulation of counsel dated the 12th day of April, A. D. 1915, signed and filed herewith, and move the Court to advance the above entitled cause for hearing to an early day, convenient to the Court, during the present term. The reasons prompting this motion are as follows:

The above entitled cause involves the constitutionality of an act initiated by the people of the State of Arizona, on the third day of November, 1914, and proclaimed by the Governor to be a law on the 14th day of December, 1914. The act provides as follows:

AN ACT

TO PROTECT THE CITIZENS OF THE UNITED STATES IN THEIR EMPLOYMENT AGAINST NON-CITIZENS OF THE UNITED STATES, IN ARIZONA, AND TO PROVIDE PENALTIES AND PUNISHMENTS FOR THE VIOLATION THEREOF.

Be It Enacted by the People of the State of Arizona:

Section 1. Any company, corporation, partnership, association or individual who is, or may hereafter become an employer of more than five (5) workers at any one time, in the State of Arizona, regardless of kind or class of work, or sex of workers, shall employ not less than eighty (80) per cent qualified electors or native-born citizens of the United States or some sub-division thereof.

Sect. 2. Any company, corporation, partnership, association, or individual, their agent or agents, found guilty of violating any of the provisions of this Act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than one hundred ($100.00) dollars, and imprisoned for not less than thirty (30) days.

Sect. 3. Any employe who shall misrepresent, or make false statement, as to his or her nativity or citizenship, shall, upon conviction thereof, be subject to a fine of not less than one hundred ($100.00) dollars, and imprisoned for not less than thirty (30) days.

The appellee, by an action instituted by him in the District Court of the United States, in and for the District of Arizona, secured an interlocutory injunction before said Court, convened under Section 266 of the Judicial Code, Act of March 3, 1911, Chapter 231, 36 Stat. 1162, enjoining the operation of said act because it offended the Fourteenth Amendment of the Federal Constitution. From this order of the District Court, so convened, appellants directly appealed to this Court.

Because of the fact that this act of the State

of Arizona has been declared invalid and unconstitutional, and the operation thereof enjoined by the District Court of the United States, in and for the District of Arizona, the appellants represent to this Court that the public necessity of the State of Arizona requires that an early judicial determination of the constitutionality and validity of said act be made by this Court.

WHEREFORE, it is prayed that this application to advance the above entitled cause for hearing at an early day, convenient to the Court, during the present term, be allowed.

Respectfully submitted,

J. ADDISON HICKS,

Of Counsel for Appellants.

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Supreme Court of the United States

OCTOBER TERM, 1915

No. 361.

WILLIAM TRUAX, SR., WILEY E. JONES, Attorney General of the State of Arizona, and W. G. GILLMORE, County Attorney of Cochise County, Arizona,
Appellants,
vs.
MIKE RAICH,
Appellee.

STATEMENT OF THE CASE.

At the regular general election held on the 3d day of November, 1914, there was enacted by the people of the State of Arizona, under the initiative provision of the Constitution of that state (Article 4, Part I) the following measure:

AN ACT

TO PROTECT THE CITIZENS OF THE UNITED STATES IN THEIR EMPLOYMENT AGAINST NON-CITIZENS OF THE UNITED STATES, IN ARIZONA, AND TO PROVIDE PENAL-

TIES AND PUNISHMENT FOR THE VIOLATION THEREOF.

Be It Enacted by the People of the State of Arizona:

Section 1. Any company, corporation, partnership, association or individual who is, or may hereafter become an employer of more than five (5) workers at any one time, in the State of Arizona, regardless of kind or class of work, or sex of workers, shall employ not less than eighty (80) per cent qualified electors or native-born citizens of the United States or some sub-division thereof.

Sec. 2. Any company, corporation, partnership, association, or individual, their agent or agents, found guilty of violating any of the provisions of this Act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than one hundred ($100.00) dollars, and imprisoned for not less than thirty (30) days.

Sec. 3. Any employe who shall misrepresent, or make false statement, as to his or her nativity or citizenship, shall, upon conviction thereof, be subject to a fine of not less than one hundred ($100.00) dollars, and imprisoned for not less than thirty (30) days.

The foregoing measure was proclaimed by the Governor, under authority of law, (Section 3333

Civil Code, Revised Statutes of Arizona, 1913) on December 14, 1914, whereupon the measure became in full force and effect a law of the State of Arizona.

On December 15, 1914, the appellee, Mike Raich, filed his bill of complaint, for himself and others similarly situated, in the District Court of the United States, in and for the District of Arizona, praying that the foregoing law be declared in violation and in contravention of the Fourteenth Amendment of the Constitution of the United States, and that his employer, the appellant Truax, be temporarily and permanently enjoined, by reason of the apparent force of the foregoing law, from discharging the appellee from the employment of the appellant Truax, and from carrying out the latter's intention and threat so to do; and lastly, the bill of complaint prayed that the remaining appellants, namely, Wiley E. Jones, Attorney General of the State of Arizona, and W. G. Gillmore, County Attorney of Cochise County, Arizona, and their successors, assistants, deputies, agents and employees, be temporarily and permanently enjoined from in any way or manner enforcing, or attempting to enforce against the appellee, the provisions of the foregoing law or any part thereof, and from institut-

ing or causing to be instituted, any suit, prosecution or proceeding to enforce against the appellee the foregoing law or any of its provisions. The bill of complaint succinctly alleged, in support of its prayer, that appellee is a native of Austria, and an alien under the laws of the United States, and not a qualified elector under the laws of the State of Arizona, and that at the time of the filing of the bill of complaint, and for a considerable time prior thereto, he had been employed by the appellant Truax in the capacity of a cook; and that of the nine persons in the employment of the appellant Truax, seven were neither native born citizens of the United States nor qualified electors, but on the contrary were aliens under the laws of the United States. The bill of complaint further alleged that appellant Truax would discharge the appellee solely by reason of the foregoing law, and because he feared to incur its penalties should he violate the terms thereof; and lastly, the bill averred that the remaining appellants, namely, the Attorney General of Arizona and the County Attorney of Cochise County, unless restrained, would institute proceedings in the courts of the State of Arizona to enforce the foregoing law, and because of the fear of such enforcement by these public officers, the appellant

Truax would discharge appellee from his employment rather than incur the penalty of the law.

A hearing was had on January 7, 1915, upon appellee's application for an interlocutory injunction, before the District Court of the United States, in and for the District of Arizona, convened under the provisions of Section 266 of the Judicial Code, Act of March 3, 1911, Chapter 231; 36 Stat. 1162; U. S. Comp. St. Supp. 1911, Page 236. By the opinion of the court, so convened, the law in question was held in violation of the Fourteenth Amendment of the Constitution of the United States, and therefore void. (219 *Fed.* 273.) On the same day an order was entered by the court, so convened, enjoining the appellants, Jones and Gillmore, their successors, assistants, deputies, agents and employees, from in any way or manner enforcing against the appellant Truax the provisions of the law in question, or from in any manner causing to be instituted any suit, prosecution or proceeding to enforce the law in question against him.

From this order of the Court, and under authority of Section 266 of the Judicial Code, *supra*, an appeal was taken directly to this Court.

SPECIFICATION OF ERRORS.

I.

The court erred in granting appellee's application for an interlocutory injunction, for the reason that the suit seeks to enjoin the enforcement of a criminal law of the State of Arizona, contrary to the powers of a court of equity.

II.

The court erred in granting appellee's application for an interlocutory injunction, for the reason that it appears from the bill of complaint that appellee is not entitled to sue in his behalf for the relief prayed for in his bill of complaint.

III

The court erred in granting appellee's application for an interlocutory injunction, for the reason that the bill of complaint does not state facts sufficient to constitute a cause of action, in that the law declared in violation of the Fourteenth Amendment of the Constitution of the United States, is a valid and subsisting law enacted under and by virtue of the police power of the State of Arizona.

ARGUMENT.

While the bill of complaint alleges that ap-

pellee was a native of Austria, the prayer of his bill did not ask that the law in question be declared in contravention of any treaty exchanged between that country and the United States. The opinion of the District Court (219 *Fed* 273, *supra*) did not touch upon the effect of the law upon any treaty with Austria, but on the other hand was confined to its repugnancy to the Fourteenth Amendment of the Constitution of the United States. Indeed, we do not apprehend that the appellee will now contend that the law in question contravenes any treaty between the United States and Austria, for the reason that none has been exchanged between the two countries, relating to conditions under which labor may be performed by their inhabitants. During the argument before the lower court, it was suggested that the law contravened Article I of the Treaty of Commerce and Navigation between Austria and the United States, concluded August 27, 1829. That treaty, however, provides no reciprocal conditions of labor which the inhabitants of the contracting parties may enjoy, but on the other hand it relates exclusively to a reciprocal liberty of commerce and navigation, as Article I, which we immediately quote, will reveal:

> "Article I.—There shall be between the Territories of the High Contracting Parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places and the rivers of the Territories of each Party, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said Territories, in order to attend to their commercial affairs; and they shall enjoy, to that effect, the same security, protection and privileges as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing."

Assuming, therefore, that the text of the treaty between the United States and Austria does not guarantee to the inhabitants of either of the contracting parties reciprocal conditions of labor, we pass to a seriatim discussion of the Specification of Errors.

I.

THE COURT ERRED IN GRANTING APPELLEE'S APPLICATION FOR AN INTERLOCUTORY INJUNCTION, FOR THE REASON THAT THE SUIT SEEKS TO ENJOIN THE ENFORCEMENT OF A CRIMINAL LAW OF THE STATE OF ARIZONA, CONTRARY TO THE POWERS OF A COURT OF EQUITY.

II.

THE COURT ERRED IN GRANTING APPELLEE'S APPLICATION FOR AN INTERLOCUTORY INJUNCTION, FOR THE REASON THAT IT APPEARS FROM THE BILL OF COMPLAINT THAT APPELLEE IS NOT ENTITLED TO SUE IN HIS BEHALF FOR THE RELIEF PRAYED FOR IN HIS BILL OF COMPLAINT.

We conjoin the first two specifications of error, because they are so related that a discussion of one necessarily involves a discussion of the other. It will be observed from the bill of complaint that we have the anomalous situation of a servant asking that a court of equity enjoin his master from discharging the former under a contract of an indefinite term of employment, and at the same time praying that public officers of the State of Arizona be enjoined from prosecuting the master, at the instance of the servant, under an alleged unconstitutional law. Our discussion of the right to enjoin criminal proceedings is not made unawares of former decisions of the Court, in the cases of *In re Sawyer*, 124 *U. S.* 200; *Reagan vs. Farmers' Loan & Trust Co.*, 154 *U. S.* 362; and *Ex parte Young*, 209 *U. S.* 123. Indeed, we accept as settled law that a court of

equity may enjoin criminal proceedings if they are instituted by a party to a suit already pending before it, or to prohibit the invasion of the rights of property by the enforcement of an unconstitutional law, or under the color of authority of an unconstitutional law. In the instant cause, however, there is no complaint by the master of contemplated criminal proceedings under an alleged unconstitutional law, but on the contrary the servant complains for him. The master must suffer the penalty of the law, if any, and not the servant, unless the latter falsely represents his nativity or citizenship, of which he does not complain in the present bill of complaint. Accepting, therefore, the allegations of the bill of complaint as true, which allege that the appellant Truax, fearing the penalty of the law, should be violate its terms, will therefore discharge the appellee, we insist that he alone should address a court of equity for a protection of his personal rights under the Fourteenth Amendment of the Constitution of the United States, and not his servant. In the recent case of *McCabe vs. Atchison, T. & S. F. R. R. Co.*, 235 *U. S.* 151, an Act of the State of Oklahoma, approved December 18, 1907, (Oklahoma Comp. Laws 1910, Sect. 860, et seq.) commonly known as the "Separate

Coach Law," was before this Court for construction. Five negro citizens of the State of Oklahoma brought the suit in equity to restrain the railroad company from making any distinction in service on account of race. The decree of the United States Circuit Court of Appeals for the Eighth Circuit, dismissing the bill, was affirmed because it disclosed that the complainants did not show by their bill sufficient interest in the subject matter of the litigation to justify a complaint by them, and this in spite of the fact that they sued for "fifty thousand persons of the negro race in the State of Oklahoma," but without alleging that they, as complainants, had suffered any of the discriminations which they alleged the law attacked imposed. Mr. Justice Hughes, speaking for the Court, stated the rule, which we now quote, as follows:

> "There is, however, an insuperable obstacle to the granting of the relief sought by this bill. It was filed, as we have seen, by five persons against five railroad corporations, to restrain them from complying with the State Statute. The suit had been brought before the law went into effect and this amended bill was filed very shortly after. It contains some general allegations as to discriminations in the supply of facilities and as to the hardships which will ensue. It states that there will be

'a multiplicity of suits,' there being at least 'fifty thousand persons of the negro race in the State of Oklahoma' who will be injured and deprived of their civil rights. But we are dealing here with the case of the complainants,and nothing is shown to entitle them to an injunction. It is an elementary principle, that, in order to justify the granting of this extraordinary relief, the complainants' need of it, and the absence of an adequate remedy at law must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any difference that other persons who may be injured are persons of the same race or occupation. It is the fact, clearly established, of injury to the complainant—not to others—which justifies judicial intervention." (Citation of authorities.)

Unless, therefore, the appellee will himself be injured, he has no cause of complaint, for he cannot complain because others might be injured. It is necessary, therefore, to determine if appellee's bill of complaint alleges facts which justify an injury or threatened injury to himself. The gravamen of his bill is that he will be discharged, and therefore injured if the law in question is enforced against his master. If this be true, then we contend that his remedy is directly against the master, if any, and not by injunction to enjoin a breach of the contract by the master, or an en-

forcement of the law, by the public officers of the State of Arizona. If he will suffer no injury, then he will, of course, have no cause for complaint. We believe this contention is directly sustained by the case of *Davis & Farnum Mfg. Co. vs. Los Angeles,* 189 *U. S.* 287. ..The facts of this case disclose that one Caroline W. Dobbins made a contract with the Valley Gas & Fuel Company, a California corporation, to build certain gas works for her, and the appellant Davis & Farnum Mfg. Co. contracted with the Valley Gas & Fuel Company to erect, as a part performance of the latter's contract with Caroline W. Dobbins, a water tank and gas holder. Thereafter, Caroline W. Dobbins obtained a permit from the Board of Fire Commissioners of the City of Los Angeles to erect the gas works, but thereafter an ordinance was enacted prohibiting the erection or maintenance of gas works within the territory where Caroline W. Dobbins had contemplated the erection of her gas works. In pursuance of this ordinance, certain employees of the Valley Gas & Fuel Company were arrested upon a charge of violating this ordinance. A subsequent ordinance was passed, and other arrests were made for violating this ordinance. The appellant, Davis & Farnum Mfg. Company, as a

sub-contractor of the Valley Gas & Fuel Company, filed its bill in equity to restrain the City of Los Angeles and its officers from enforcing these ordinances prohibiting the erection or maintenance of gas works, but a demurrer to the bill was filed by the City for want of equity and jurisdiction, which was sustained by the court upon the ground that a court of equity had no power to restrain criminal proceedings. The constitutionality of the ordinances was attacked, but the court refused to permit the sub-contractor to enjoin the enforcement of an alleged unconstitutional ordinance against the contractor, because the sub-conrtactor had a mere indirect interest. Mr. Justice Browne, speaking for the court, after discussing the exceptions to the rule that a court of equity will not enjoin criminal proceedings, said this:

> "This rule, however, has no application to sub-contractors, who stand in no position to enforce the right of their immediate contract, such as was the Gas & Fuel Company, or of the owner of the property, who had agreed with such immediate contractors to do the work. Plaintiff in this case stands practically in the position of one who seeks to take advantage of the unconstitutionality of a law in which it has only an indirect interest, and by

the enforcement of which it has suffered no legal injury.

* * * * * * * * * *

As the appellant has shown no legal injury in this litigation, and no lack of an adequate and complete remedy at law, it results that the bill was properly dismissed, and the decree of the court below is therefore affirmed."

We believe upon the authority last cited that the lower court erred in granting appellee's application for an interlocutory injunction. There was no definite term of employment, at least it was not so alleged by the bill, and consequently the servant could be discharged at the will of the master, even though he was discharged because of the threats to enforce an alleged unconstitutional act against the master. He would have an adequate remedy at law for a breach of the contract, if there was a resulting damage, and the master would be compelled to respond to him for such damages. It seems, therefore, that the position of appellee in the instance case is the same as that of appellant in the case of *Davis & Farnum Mfg. Co. vs. Los Angeles, supra.*

Assuming that the public officers of the State of Arizona will enforce the law in question against the appellant Truax, he alone is the party

directly interested, in so far as criminal proceedings against him are concerned, so we submit that if he has cause of complaint, he alone should complain and not his servant for him.

The lower court refused to enjoin appellant Truax from discharging the appellee, thereby denying the prayer of the bill of complaint in this respect, but it plainly seems that if an injunction did not lie in this respect, it should not lie at the instance of the servant to enjoin the public officers of the State from enforcing an alleged unconstitutional act against the master.

III.

THE COURT ERRED IN GRANTING APPELLEE'S APPLICATION FOR AN INTERLOCUTORY INJUNCTION FOR THE REASON THAT THE BILL OF COMPLAINT DOES NOT STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION, IN THAT THE LAW DECLARED IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, IS A VALID AND SUBSISTING LAW ENACTED UNDER AND BY VIRTUE OF THE POLICE POWER OF THE STATE OF ARIZONA.

In discussing this specification of error, we

approach it not unmindful of the plenary personal protection the Fourteenth Amendment of the Constitution of the United States accords to residents thereof, regardless of their citizenship, and especially the plenary protection which has been accorded to such residents by the construction placed by this and inferior courts upon that amendment. Since the case of *Yick Wo vs. Hopkins*, 118 *U. S.* 356, the courts of the United States have been universal in their declarations that the Fourteenth Amendment accords a personal protection to the residents of the United States of their civil rights, regardless of their citizenship. We accept as axiomatic that the laws of a state and the national government must operate equally upon the residents of the United States, regardless of their citizenship, unless there be some justifiable exigency subject to the control of the police power of the state, or an inherent power of the sovereignty to discriminate between its residents in respect to the management and control of the sovereign's property. The law enacted by the people of the State of Arizona, now before this Court for construction, was intended to remedy a condition which the citizens of the State of Arizona (for they alone had the power to vote upon that measure, the right of

franchise being confined to them) considered intolerable, that is to say, the citizens of the State of Arizona realized that the interest and welfare of the State would be best conserved by manning her industries with workers of whom eighty per cent must owe allegiance to the government by which they were protected, or have a voice in the elections held in its political subdivisions. The act itself is declaratory of the right of the alien to pursue lawful vocations, but a restriction upon a pursuit so extended that it will engender the peace, welfare and safety of those who owe allegiance directly to the government. So, in this respect, the law in question differs from those which have been heretofore nullified by the Courts, because of their inequality, in that it is not a total deprivation of the civil rights of the residents of the State, regardless of their citizenship, but is limited to that ratio which requires that one alien can be employed to four citizens or qualified electors of some political subdivision of the United States, wherever there is an employment of five persons or more. We attempt, therefore, to justify the constitutionality of the law, first, because it is a law, enacted under and by virtue of the police power of the State, to preserve the peace, safety and welfare of its citizens,

and, secondly, because it does not operate unequally upon the residents of the State, regardless of their citizenship, to the extent that it is a total deprivation of the right of the alien to labor.

Of the varied industries of the State of Arizona, the production of copper predominates. It is a fact, which the people and the courts of the State well know, that in manning these industries, the alien laborer predominates. There is no product more esential to the welfare and preservation of the nation or state than this. In the conflict now raging across the waters from us, this product is essential not only to the success, although it be sanguinary, of the nations involved, but to their very welfare and preservation. So true is this that it has been declared a contraband of war, but regardless, the copper industries of the United States are hard put to supply an inviting market with the product. Is it not, therefore, esential that industries whose product is so essential to the welfare and preservation of a nation should be manned by a majority of those who are not only in sympathy with the government under which they work, but who owe allegiance to it?

This Court has sanctioned laws which admittedly discriminate between resident citizens and

aliens of the States. For instance, in the case of *Patsone vs. Pennsylvania*, 232 *U. S.* 138, it was held that the State of Pennsylvania could restrict to its own citizens the taking of its game, and for the effective enforcement of the law, the sale of firearms could be denied to the alien resident. A similar privilege was denied to the alien by the State of Connecticut. *Greer vs. Connecticut*, 161 *U. S.* 519. Again, this Court gave its sanction to a statute which denied to aliens the right to hold or inherit real estate, except where the right had been secured by treaty. *Blythe vs. Hinckley*, 180 *U. S.* 331. A statute of the State of Virginia was upheld, which denied not only to the citizen, but to the alien in the State, the right to plant fish and oysters in its public waters. *McCready vs. Virginia*, 94 *U. S.* 391. But we are met with the contention that the laws construed in these cases were justifiable under the inherent power of the sovereignty to discriminate between citizens and aliens in the distribution of its own resources. We canot perceive any distinction between the regulation by a State of its own property, and that which is inherently derived from the State. Why should this preference be extended to the State and denied to the citizens who constitute the State? *U. S. vs. Cruikshank*, 92 *U. S.* 514.

We have seen in the case of *Patsone vs. Pennsylvania*, supra, that the sale of fire-arms could be denied to the alien resident, in order to more effectively enforce a law restraining the taking of game to the citizen of the State. Could it not be logically argued that the purpose, primarily, of the law, there construed, was to deny the sale of fire-arms to the alien, rather than to restrain their taking of game? In any event the State of Pennsylvania did indirectly prohibit the sale of fire-arms to aliens, and the law was sustained by this court. The people of Arizona have used no subterfuge, but have directly said that the employment of aliens, unless restrained, was a peril to the public welfare, and that a strong and preponderant opinion demanded a limitation upon this right of employment. It seems to us that the police power reserved to the State of Arizona justifies such a law.

In the case of *Noble State Bank vs. Haskell*, 219 *U. S.* 104-575, an act of the State of Oklahoma, approved October 17, 1907, levying an assessment of one per cent of the bank's average daily deposits for the purpose of creating a depositors' guarantee fund, was construed. It was urged that the act was void because of its repugnancy to Article 1, Section 10, and the Four-

teenth Amendment of the Constitution of the United States. But this Court was inclined to the opinion that the Act was justifiable under the police power of the State of Oklahoma, which was defined in the following language:

> "It may be said in a general way that the police power extends to all the great public needs. *Camfield vs. U. S.*, 167 *U. S.* 518. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or *strong and preponderant opinion* (italics ours) to be greatly and immediately necessary to the public welfare."

Also, as was said in *Camfield vs. United States*, supra, referring to a Massachusetts statute:

> "The case is authority for the proposition that the police power is not subject to any definite limitations, but is co-extensive with the necessities of the case and the safeguard of the public interests."

The law now before the court for construction, as the bill of complaint will show, was enacted by the people of the State of Arizona themselves, and not by their representatives. It readily occurs to us that the law may therefore be justifiable under the police power of the State, because it has been "held by a strong and preponderant opinion to be greatly and immediately necessary

to the public welfare." There could perhaps be no better evidence of the needs of the public welfare than that which is expressed through the agency of a law enacted by a vote of the people of a State. If we correctly interpret the language of this Court, in the case immediately quoted from, we are assured that the law now before the court attempts to do that which this court has said a State may do under the police power reserved to it, namely, enact legislation in aid of that which the people of the State of Arizona have deemed necessary to the public welfare "by the prevailing morality or strong and preponderant opinion."

The law now before the court for construction is not a total deprivation of the civil rights of aliens, as those which were construed by this Court in the cases we have just referred to, for the State of Arizona has not said that its alien residents are totally deprived of the right to labor, but it has only restricted that right to those instances where five or more workers are engaged, so that the employer shall engage not less than eighty per cent of native-born citizens of the United States or qualified electors of some political sub-division of the United States, allowing the remainder of twenty per cent alien laborers.

The lower court in its opinion (219 Fed. 283, *supra*) said that if the State, under the guise of the police power, could enact a law prohibiting an employer from employing more than twenty per cent of alien laborers, then it could enact a law restricting the employment of aliens altogether. It is enough to say that the State has not attempted to totally deprive the alien of the right to labor, and we do not think the Court should indulge the presumption that it will do a thing which it knows to be futile. It cannot be said that the alien is deprived of an equal protection of the law if, because of the limited number of aliens residing in the State of Arizona, in comparison with citizens of the United States, or qualified electors of some political sub-division thereof, he is permitted to labor on an equality with the citizens of the United States or the qualified electors of some political sub-division of the United States. If, perchance, the State is comprised of eighty per cent citizens or qualified electors of some political sub-division of the United States, and twenty per cent aliens, then the latter would be upon an equality with the former, in so far as his right and opportunity to labor is concerned.

For the reasons which we have heretofore given, we respectfully submit:

1. That the law in question violates no treaty between Austria and the United States, and

2. That the servant cannot complain for the master of a threatened injury to the latter by public officers of the State of Arizona, and to this extent an injunction against the institution of criminal proceedings against the master at the instance of the servant is contrary to the powers of a court of equity, and

3. That the law in question is a valid exercise of the police power of the State, because it is a law enacted to preserve the safety and welfare of the State and its citizens.

All of which is respectfully submitted.

WILEY E. JONES,
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Office Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 361.

WILLIAM TRUAX, SR., WILEY E. JONES, ATTORNEY GENERAL OF THE STATE OF ARIZONA, AND W. G. GILMORE, COUNTY ATTORNEY OF COCHISE COUNTY, ARIZONA, APPELLANTS,

vs.

MIKE RAICH, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

BRIEF FOR APPELLEE.

ALEXANDER BRITTON,
EVANS BROWNE,
FRANCIS W. CLEMENTS,
Counsel for Appellee.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 561.

WILLIAM TRUAX, SR., ET AL., APPELLANTS,

vs.

MIKE RAICH, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

BRIEF FOR APPELLEE.

Statement of Case.

This cause comes before the court on appeal from the action of the District Court of the United States for the District of Arizona in sustaining a bill in equity filed by Raich to enjoin and prevent the enforcement of an act passed November 3, 1914, under the initiative provision of the State constitution, reading as follows:

"*AN ACT*

"*To Protect the Citizens of the United States in Their Employment Against Non-citizens of the United States in Arizona, and to Provide Penalties and Punishment for the Violation Thereof.*

"*Be it enacted by the People of the State of Arizona:*

"SECTION 1. Any company, corporation, partnership, association or individual who is, or may hereafter become an employer of more than five (5) workers at any one time, in the State of Arizona, regardless of kind or class of work, or sex of workers, shall employ not less than eighty (80) per cent qualified electors or native-born citizens of the United States or some subdivision thereof.

"SEC. 2. Any company, corporation, partnership, association or individual, their agent or agents, found guilty of violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than one hundred ($100.00) dollars, and imprisoned for not less than thirty (30) days.

"SEC. 3. Any employee who shall misrepresent, or make false statement, as to his or her nativity or citizenship, shall, upon conviction thereof, be subject to a fine of not less than one hundred ($100.00) dollars, and imprisoned for not less than thirty (30) days."

The bill of complaint set forth that Raich was a native of Austria, a non-citizen of the United States, resident in the State of Arizona; that he is employed by William Truax, Sr., as cook in a restaurant in the city of Bisbee, Arizona; that William Truax, Sr., employs in his restaurant nine employees, seven of whom are neither native-born citizens of the United States nor qualified electors, but aliens; that solely because of the provisions of the act above referred to William Truax, Sr., informed Raich of his purpose to discharge him, and that unless restrained Wiley E. Jones, Attorney General of the State, and William G. Gilmore,

county attorney of Cochise County, would institute proceedings in the State court to enforce said act, all to the irreparable injury of Raich, who would thereby be unjustly and unlawfully deprived of his right to contract for the sale of his labor; that the law under which Truax, Wiley, and Gilmore seek to justify their actions is unconstitutional and void because repugnant to the Fourteenth Amendment to the Constitution of the United States, which prohibits any State from denying to any person within its jurisdiction the equal protection of the law, and which provides that no State shall deprive any person of life, liberty, or property without due process of law; that said law was further repugnant to section 1979 of the Revised Statutes of the United States, in that it pretends to justify Truax in depriving Raich of the right, privilege, and immunity secured to him by the Constitution and laws of the United States, to wit, the right, privilege, and immunity, without discrimination as an alien, to be employed in the lawful employment of which he is threatened to be deprived by Truax solely because of said act of the State of Arizona (Rec., pp. 3 and 4).

Truax, Wiley, and Gilmore moved dismissal of the bill because—

I.

The suit is in truth and effect one against the State of Arizona without its consent to be sued.

II.

The suit seeks to enjoin the enforcement of a criminal statute of the State of Arizona, contrary to the powers of a court of equity.

III.

Plaintiff's bill of complaint does not state facts sufficient to constitute a cause of action in equity.

IV.

Plaintiff is not entitled to sue in his behalf for the relief prayed for in his bill of complaint (Rec., p. 17).

The cause was heard by Honorable William W. Morrow, a circuit judge for the Ninth Circuit of the United States, and Honorable William C. Van Fleet, district judge of the Northern District of California, and Honorable William H. Sawtelle, district judge of the District of Arizona, sitting as the District Court of Arizona, under section 266 of the Judicial Code, and in an elaborate opinion it was held "that the "act in question denies to the complainant the equal pro- "tection of the laws, and is therefore in violation of the "Fourteenth Amendment to the Constitution of the United "States, and is void."

Appeal by defendants brings the case to this court.

ARGUMENT.

II.

The Fourteenth Amendment to the Constitution of the United States is not confined to the protection of citizens of the United States, but is universal in its application to ALL citizens within the territorial jurisdiction without regard to any difference of race, color, or nationality, and the promise of equal protection of the law is equivalent to the pledge of the protection of equal laws.

The Fourteenth Amendment to the Constitution of the United States provides:

> "No State shall make or enforce any law which "shall abridge the privileges and immunities of the "citizens of the United States, nor shall any State "deprive any person of life, liberty or property with-

"out due process of law, nor deny to any person
"within its jurisdiction the equal protection of the
"law."

It has been practically settled by a long line of decisions that the Fourteenth Amendment is not confined to the protection of citizens of the United States, but is universal in its application to ALL persons within the territorial jurisdiction, without regard to any difference of race, color, or nationality, and the promise of equal protection of the law is equivalent to a pledge of the protection of equal laws.

In the leading case of *Yick Wo vs. Hopkins*, 117 U. S., 356-369, this court announced the principle as follows:

"The Fourteenth Amendment to the Constitution
"is not confined to the protection of citizens. It
"says: 'Nor shall any State deprive any person of
"'life, liberty, or property without due process of
"'law; nor deny to any person within its jurisdiction
"'the equal protection of the law.' These provisions
"are universal in their application, to all persons
"within the territorial jurisdiction, without regard
"to any differences of race, of color, or nationality;
"and the equal protection of the laws is a pledge of
"the protection of equal laws. It is accord[illegible] en-
"acted by § 1979 of the Revised Statute[illegible] 'all
"'persons within the jurisdiction of the U[illegible]tates
"'shall have the same right in every State and Terri-
"'tory to make and enforce contracts, to sue, be
"'parties, give evidence, and to the full and equal
"'benefit of all laws and proceedings for the security
"'of persons and property as is enjoyed by white
"'citizens and shall be subject to like punishment,
"'pains, penalties, taxes, licenses, and exactions of
"'every kind, and to no other.' The questions we
"have to consider and decide in these cases, therefore,
"are to be treated as involving the rights of every
"citizen of the United States equally with those of
"the strangers and aliens who now invoke the juris-
"diction of the court."

See also *Barvier vs. Connelly*, 113 U. S., 27-31, wherein the court said:

> "The Fourteenth Amendment, in declaring that
> " no State 'shall deprive any person of life, liberty,
> " 'or property without due process of law, nor deny
> " 'to any person within its jurisdiction the equal pro-
> " 'tection of the laws,' undoubtedly intended that
> " there should be no arbitrary deprivation of life or
> " liberty, or arbitrary spoliation of property, but that
> " equal protection and security should be given to
> " all under like circumstances in the enjoyment of
> " their personal and civil rights; that all persons
> " should be entitled to pursue their happiness and
> " acquire and enjoy property; that they should have
> " like access to the courts of the country for the
> " protection of their persons and property, the pre-
> " vention and redress of wrongs, and the enforce-
> " ment of contracts; that no impediment should be
> " interposed to the pursuits of any one except as ap-
> " plied to the same pursuits by others under like
> " circumstances; that no greater burdens should be
> " laid upon one than are laid upon others in the same
> " calling and condition, and that in the administra-
> " tion of criminal justice no different or higher
> " punishment should be imposed upon one than
> " such as is prescribed to all for like offenses."
>
> See also *Missouri vs. Lewis*, 101 U. S., 22.

It may be safely stated as firmly and finally established that one of the purposes and effects of the Fourteenth Amendment was to forbid discrimination by any State between citizens and resident aliens, based solely upon the fact of alienage, so far as concerns the right to enjoy life, liberty and the pursuit of happiness and the equal protection of the laws.

Appellee Raich, a subject of Austro-Hungary, resident in Arizona, was and is entitled to the full protection guaranteed by the Fourteenth Amendment.

III.

It is equally true that among the rights so guaranteed to resident aliens, as well as citizens, is that of freely contracting to render service and perform labor, and to follow any ordinary lawful avocation. No impediment should be interposed to these rights of everyone, except such as are applied to the same pursuits by others under like circumstances and conditions.

> "The provisions of the State and of the Federal
> " Constitutions protect every citizen in the right to
> " pursue any lawful employment in a lawful man-
> " ner. He enjoys the uttermost freedom to pursue
> " his chosen pursuit and any arbitrary distinction
> " against or deprivation of that freedom by the legis-
> " lature is an invasion of the constitutional guar-
> " antee."
>
> *People vs. Williams,* 189 N. Y., 13.

In *Lockner vs. New York,* 198 U. S., 45, this court said:

> "The general right to make a contract in relation
> " to his business is part of the liberty of the in-
> " dividual protected by the 14th Amendment of the
> " Federal Constitution. Allgeyer *vs.* Louisiana, 165
> " U. S., 578. Under that provision no State can de-
> " prive any person of life, liberty or property without
> " due process of law. *The right to purchase or sell*
> " *labor is part of the liberty protected by this amend-*
> " *ment,* unless there are circumstances which ex-
> " clude the right. * * * Of course the liberty
> " of contract relating to labor includes both parties
> " to it. The one has as much right to purchase as
> " the other to sell labor. * * * It is a question
> " of which of two powers or rights shall prevail—the
> " power of the State to legislate or the right of the
> " individual to liberty of person and freedom of
> " contract. * * * We think the limit of police
> " power has been reached and passed in this case."

In the case of *Butchers' Union Co. vs. Crescent City Company*, 111 U. S., 746-762, in dealing with the act granting exclusive privilege for stock-raising and slaughter-houses at New Orleans, this court said:

> "The right to follow any of the common occupa-
> " tions of life is an inalienable right; it was formu-
> " lated as such under the phrase 'pursuit of happiness'
> " in the Declaration of Independence which com-
> " menced with the fundamental proposition that 'all
> " 'men are created equal, that they are endowed by
> " 'their Creator with certain inalienable rights; that
> " 'among these are life, liberty and the pursuit of
> " 'happiness.' This right is a large ingredient in the
> " civil liberty of the citizen. To deny it to all but a
> " few favored individuals, by investing the latter with
> " a monopoly is to invade one of the fundamental
> " privileges of the citizen contrary not only to com-
> " mon right but as I think to the express words of
> " the Constitution. It is what no legislature has a
> " right to do."
>
> "If it is not a denial of the equal protection of
> " the laws to grant to one man or set of men, the
> " privilege of following an ordinary calling in a
> " large community, and to deny it to all others, it
> " is difficult to understand what would come within
> " the constitutional prohibition."
>
> See also *Allgeyer vs. Louisiana*, 165 U. S., 578.

In *Powell vs. Pennsylvania*, 127 U. S., 678-684, considering the law relating to the sale of Oleomargarine, this court said:

> "The main proposition advanced by the defendant
> " is that his enjoyment upon terms of equality with
> " all others in similar circumstances of the privilege
> " of pursuing an ordinary calling or trade, and of
> " acquiring, holding and selling property is an essen-
> " tial part of his right of liberty and property, as
> " guaranteed by the Fourteenth Amendment. The
> " court assents to this general proposition as embody-
> " ing a sound principle of constitutional law."

Looked at in the light of these decisions, it must be admitted that the right to labor is a right to liberty and property protected by the Fourteenth Amendment.

In the act of Arizona herein complained of there is no apparent purpose to conceal the intent of its framers, and the same by its express language and its avowed purpose is baldly and openly repugnant to the Federal Constitution and the rights of this appellee. The act is one—

> "To PROTECT the CITIZENS of the United States *in* " *their employment against non-citizens* of the United " State in *Arizona.*"

Having thus stated its purpose, the act provides that no person, association, or corporation employing more than five workers shall employ less than eighty per cent qualified electors or native-born citizens of the United States. It requires no argument to demonstrate what this act plainly states, to wit, a purpose to bar a certain percentage of alien residents in Arizona from their rights under the Constitution to enjoy their liberty and contract for their labor and to receive the equal protection of the law. Under this legislation, if sustained, a large number of alien residents in Arizona would lose their right to earn a living, and so far as they are concerned the Federal Constitution and the protection of the law would be a nullity.

In the *Slaughter House Case,* 16 Wall., 36, covering an act of Louisiana granting exclusive privilege, it was said in a dissenting opinion:

> "In my view, a law which prohibits a large class " of citizens from adopting a lawful employment, or " from following a lawful employment previously " adopted, does deprive them of liberty as well as " property, without due process of law. Their right " of choice is a portion of their liberty; their occupa- " tion is their property."

We take it therefore as established that the act of the State is plainly and avowedly in derogation of the right of a certain percentage of alien residents to work in any capacity, and unless it can be sustained upon some ground outside the Fourteenth Amendment must be held to be repugnant thereto and therefore null and void.

IV.

The Law of Arizona Contravenes the Fourteenth Amendment to the Constitution of the United States and is Not Proper Exercise of Police Power of the State.

The State undertakes to sustain the legislation as being the proper exercise of the police power of the State.

The courts have never undertaken to fix precisely the exact limits of the police power, but have applied the broad principles which govern its exercise in determining whether a given act of the legislature falls within or without its scope. It occupies a portion of that "twilight zone" where the Sherman act and the definition of fraud have so long lingered. Whatever its precise limitations, it must be conceded that it is not altogether above and beyond the Federal Constitution, and every act which contravenes the Constitution cannot be sustained upon the general plea of "police power." Even this broad power, not easily defined, nor too strictly confined, has its limitations, and when advanced to save an act so flagrantly violative of the Constitution as the one here in question, must be shown to be absolutely necessary to promote the public health, safety, or morals.

In *Crane vs. New York* the appellate division of the Supreme Court of the State had this matter under discussion and said:

> "It is sought to sustain the act as an exercise by
> " the State of the police power, that well recognized
> " but not easily defined power under which the State

" may and often does restrict the liberty of the in-
" dividual for the safety and protection of the com-
" munity. It is not easy, nor is it necessary to at-
" tempt to precisely define the scope and limitations
" of the police power, but it may not be said gen-
" erally to authorize such enactments as are deemed
" necessary for the protection of society and to guard
" its morals, safety, health and good order, but it
" is well recognized that in order to justify an act as
" an exercise of the police power there must appear
" to be some obvious and real connection between the
" terms of the enactment and some of the purposes
" for the attainment of which the police power may
" be exercised. Consequently an act which invades
" personal rights or private property cannot be justi-
" fied under the police power unless there be some
" discernible relation between it and some legitimate
" object of police regulation. Whether or not any
" statute can be upheld as a valid exercise of the
" police power is also a proper subject for judicial
" inquiry. It was said in Colon *vs.* Lisk (153 N. Y.,
" 188): 'The legislature may not, under the guise
" 'of protecting the public interests, arbitrarily inter-
" 'fere with private business or impose unusual or un-
" 'necessary restrictions upon lawful occupations. In
" 'other words its determination as to what is a
" 'proper exercise of its police power is not final or
" 'conclusive, but is subject to the supervision of the
" 'courts (Lawton *vs.* Steele, 152 U. S., 133, 137).
" 'Whenever the legislature passes an act which tran-
" 'scends the limits of the police power, it is the duty
" 'of the judiciary to pronounce it invalid, and to
" 'nullify the legislative attempt to invade the citizens'
" 'rights. (People *ex rel.* Nechamus *vs.* Warden,
" '144 N. Y., 529, 535). That power must be ex-
" 'ercised subject to the provisions of both Federal
" 'and State constitutions. Laws passed in the ex-
" 'ercise of it must tend towards the preservation of
" 'the lives, health, morals or welfare of the com-
" 'munity, and the court must be enabled to see some
" 'clear and real connection between the assumed
" 'purpose of the law and the actual provisions
" 'thereof, and that the latter tend in some plain

" 'and appreciable manner towards the accomplish-
" 'ment of the objects for which the legislature may
" 'use this power (Health Department *vs.* Rector,
" '145 N. Y., 32, 39).' It seems to be quite clear
" that the provision of the labor law now under con-
" sideration cannot be upheld on this ground. As
" was said by Chief Justice Cullen in discussing a
" so-called 'eight-hour law': 'It seems to me to be en-
" 'tirely clear that the statute cannot be upheld as
" 'an exercise of the police power vested in the legis-
" 'lature. I should think the proposition too clear
" 'for debate, but, if this assertion be considered
" 'dogmatic, then I say that the question is settled
" 'by the decisions both of the court and the Supreme
" 'Court of the United States. While the field for
" 'the exercise of the police power, subject to which
" 'all property is possessed by the citizen and all his
" 'callings or vocations must be pursued, is very
" 'broad, so broad that no court has sought to define
" 'accurately its extent, still it is subject to recognized
" 'limitations.' (People *vs.* The Orange County
" Road Construction Company, 175 N. Y., 84-87).

"In a later case the Court of Appeals, while sus-
" taining the validity of an eight-hour law, said:

" 'We do not uphold the labor law as constitu-
" 'tional to the limited extent that we pass upon it at
" 'all, because it is authorized by the police power
" 'which belongs to the State, for we cannot see that
" 'it bears any reasonable relation to the public health,
" 'safety, or morals' (People *ex rel.* Williams, etc.,
" *vs.* Metz, 193 N. Y., 148-159). We too are unable
" to see how the public health, safety or morals can
" be affected by the citizenship or alienage of laborers
" upon the subways, or upon other work of a similar
" character. It is true that in certain cases, and with
" reference to certain occupations it has been held
" to be lawful, under the police power, to discrimi-
" nate between citizens and aliens, but the very cases
" in which it has been so held, and the reasons given
" for so holding illustrate their inapplicability to the
" present case. Thus in Commonwealth *vs.* Hana
" (195 Mass., 262), an act was upheld that prohibited
" the issuance of peddlers' licenses to any person ex-

" cept citizens or those who had declared their in-
" tention to become citizens. A similar act had been
" held unconstitutional in Maine (State *vs.* Mont-
" gomery, 94 Maine, 192). The Supreme Court of
" Massachusetts, however, sustained the act in that
" State on the ground that the legislature might have
" discovered a reason for passing the act because 'the
" 'business of peddling furnishes such opportunities
" 'for the practice of fraud that it is a proper subject
" 'for legislative regulation, and that such regulation
" 'has been practiced from early times both in Europe
" 'and America is shown at length by Mr. Justice Gray
" 'in Ernest *vs.* Missouri, 156 U. S., 296.' In the
" course of its opinion the court quoted the Four-
" teenth Amendment and said: 'It is decided that this
" 'provision applies to aliens as well as to citizens of
" 'the United States, and it is clear that a statute ar-
" 'bitrarily forbidding aliens to engage in ordinary
" 'kinds of business to earn their living would be un-
" 'constitutional and void.'

"So also statutes have frequently been upheld
" which discriminated in favor of citizens as against
" aliens in the matter of granting licenses to trade
" in liquor, but the relation of the liquor traffic to the
" health, morals and good order of the community
" is obvious and has been recognized from the earliest
" times, and this relation has been the reason given
" for the discrimination. It is quite true that classi-
" fication is not necessarily unlawful discrimination,
" and that the State has broad powers of classifica-
" tion for the purposes of legislation, but to be lawful
" such classification must have some reasonable basis
" to rest upon and must not be arbitrary or capricious
" or founded on mere whim (Peo. *ex rel.* Farring-
" ton *vs.* Mensching, 187 N. Y., 8-16; Gulf, Colorado
" and Santa Fe R'way *vs.* Ellis, 165 U. S., 150).

"It would certainly be anomalous and illogical to
" uphold on this ground a statute or classification
" based upon the precise discrimination which is for-
" bidden by the Fourteenth Amendment, and having
" no other discernible basis."

In *Henderson vs. Wickham*, 92 U. S., 259, this court in considering a State regulation affecting immigrants said:

> "Nothing is gained in the argument by calling it "the police power. * * * It must occur very "often that the shading which marks the line between "one class of legislation and another is very nice and "not easily distinguishable. But, however difficult "this may be, it is clear, from the nature of our com- "plex form of government that whenever the statute "of a State invades the domain of legislation which "belongs exclusively to the Congress of the United "States, it is void, no matter under what class of "power it may fall or however closely allied to "powers conceded to belong to the States."

Personally we are of opinion that the courts have gone as far as possible in sustaining the police power of the various States. Many acts of more than doubtful constitutionality have been sustained on this plea, but so far as we have been able to read and dissect such opinions they have all dealt with laws which at least had some pretense toward preserving the safety, health, or morals of the people of the State as a whole. Not one of them falling under our observation has sought, like the act of Arizona here in question, to forbid employment to an alien, for no reason whatever except apparently to keep such alien from working. It is not and cannot be claimed that Raich in his employment as a cook was in danger of jeopardizing the health, safety, or morals of the people of Arizona. Although the act provides for the protection of the employment of native-born citizens, it is not claimed that any native-born citizen has been deprived of a right or opportunity to labor by reason of such alien residents, and the affairs of the State of Arizona would be in a most deplorable condition if alien labor were driven out, because it is a well-known fact that there is only a small percentage of native-born laborers in Arizona to perform the work necessary for that State to even exist. The act, therefore, even in this view, is directly opposed to instead of being in support of the general welfare of the State.

The following language of this court in *Connelley vs. Union Sewer Pipe Co.*, 184 U. S., 539, is conclusive:

> "But, as the Constitution of the United States is "the supreme law of the land, anything in the constitution or statutes of the States to the contrary "notwithstanding a statute of a State, even when "avowedly enacted in the exercise of its police powers, must yield to the law. * * * The State "has undoubtedly the power by appropriate legislation to protect the public morals, the public health "and the public safety; but if, by their necessary "operation, its regulations looking to either of these "ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they "must be deemed unconstitutional and void."

In the case at bar the act not only discriminates as between citizens and aliens, but as between aliens, because employers of not over five persons are not included in the prohibition, and where more than five persons are employed twenty per cent may be aliens. Even in the classification attempted by the State it is discriminatory and unlawful.

Counsel for appellants in their argument are as evasive as the law they seek to sustain. They do not deny, but admit—

> "the plenary personal protection of the Fourteenth "Amendment of the Constitution of the United "States accords to residents thereof, *regardless of* "*their citizenship*, and especially the plenary protection which has been accorded to such residents by "the construction placed by this and inferior courts "upon that amendment. * * * We accept as "axiomatic that the laws of a State and the National "Government must operate equally upon the residents of the United States, regardless of their citizenship, unless there be some justifiable exigency "subject to the control of the police power of the "State, or an inherent power of the sovereignty to "discriminate between its residents in respect to the "management and control of the surveyor's property."

Having thus broadly stated their understanding of the law, counsel seek to sustain this particular act by claiming:

(1) That the welfare of the State of Arizona demands that the varied industries of the State be manned by citizen labor, and,

(2) That no discrimination is practiced because the law does not discriminate as to *all* aliens, but only as to such proportion of aliens as the entire population bears to the entire citizen population.

Even though these reasons were sound, instead of being wholly without merit, there is nothing in the act nor in the record to show the stated facts to be true. The authorities hereinbefore quoted fully dispose of the first contention, because there is no possible connection with the causes justifying the exercise of the police power with the reason stated, and, secondly, the discrimination is just as pronounced and vicious if applied to twenty per cent of aliens as if applied to all, and yet counsel admit that if applied to all the act would be clearly unconstitutional and void.

The authorities cited by counsel as sustaining the right of a State to discriminate as between citizens and alien residents do not touch this case.

In *Patsone vs. Pennsylvania,* 232 U. S., 138, the right of the State to forbid the sale of fire-arms to alien residents was sustained, but that is clearly a matter affecting the health and safety of the community.

Greer vs. Connecticut, 161 U. S., 519;
Blythe vs. Hinckley, 180 U. S., 331;
McCready vs. Virginia, 94 U. S., 391,

were not only cases where the health of the community was involved, but the discrimination was upheld because involving the distribution of property belonging to the State. None of these cases nor others which might be cited affecting

the right to vote, the right to hold office, the right to peddle, etc., are in any sense similar to nor affected by the facts in the case at bar. The Arizona act does not refer to any property of the State nor to any thing over which the State exercises her inherent right of sovereignty. It does not refer to any occupation affecting the safety, health, or morals of the people of Arizona. It attempts broadly and wholly without regard to any of the above-stated reasons to deny employment in any occupation, however harmless, and to deny simply and solely because of alienage.

In *Mugler vs. Kansas,* 123 U. S., 623-661, involving a State law prohibiting the manufacture and sale of intoxicating liquors, except for medicinal, scientific, and mechanical purposes, this court held:

> "The courts are not bound by mere forms, nor are
> " they to be misled by mere pretenses. They are at
> " liberty—indeed are under a solemn duty—to look
> " at the substance of things, whenever they enter
> " upon the inquiry whether the legislature have
> " transcended the limits of its authority. If, there-
> " fore, a statute purporting to have been enacted to
> " protect the public health, the public morals, or the
> " public safety, has no real or substantial relation to
> " those objects, or is a palpable invasion of rights
> " secured by the fundamental law, it is the duty of
> " the courts to so adjudge, and thereby give effect to
> " the Constitution."

It is apparent that if the police power extend to matters affecting contract relations in which the public health, public morals, and the public safety are not in any way concerned there is practically no limits to its exercise and all business conducted in the States, whether of a public, quasi-public or strictly private nature, could be made subject to such laws regulative thereof as the legislature of the respective States might see fit to adopt and the personal liberty of

the citizen guaranteed to him by the Constitution would be entirely subverted.

See *Ward vs. Maryland,* 12 Wall., 418-430.

We do not believe the point worthy of further elaboration.

V.

This is not necessarily a suit in equity to enjoin a criminal proceeding, but in any event is fully justified in order to prevent the invasion of the rights of property of appellee by the enforcement of an unconstitutional law, the enforcement of which works a direct injury and irreparable harm to appellee.

Finally, counsel for appellants, after thus practically conceding the unconstitutionality of the act, contend that the question cannot be decided in this case—

(A) Because a court of equity will not enjoin a criminal proceeding, and,

(B) Because appellee was not entitled to sue in his behalf for the relief prayed for in his bill of complaint.

Upon these points counsel for appellants argue that their—

> " discussion of the right to enjoin criminal proceed-
> " ings is not made unawares of former decisions of
> " the court in the cases of—
>
> " *In re Sawyer,* 124 U. S., 200.
> " *Reagan vs. Trust Co.,* 154 U. S., 362.
> " *Ex parte Young,* 209 U. S., 123.
>
> "Indeed, we accept as settled law that a court of
> " equity may enjoin criminal proceedings if they are
> " instituted by a party to a suit already pending be-
> " fore it, or to prohibit the invasion of the rights of
> " property by the enforcement of an unconstitutional

> " law or under the color of authority of an unconsti-
> " tutional law."
>
> "In the instant cause, however, there is no com-
> " plaint by the master of contemplated criminal pro-
> " ceedings under an alleged unconstitutional law, but
> " on the contrary the servant complains for him.
> " The master must suffer the penalty of the law, if
> " any, and not the servant, unless the latter falsely
> " represents his nativity or citizenship of which he
> " does not complain in the present bill of complaint."

The district court held that this bill could not be sustained under equity rule 38, providing that—

> " when the question is one of common or general
> " interest to many persons, constituting a class so
> " numerous as to make it impracticable to bring them
> " all before the court, one or more may sue or defend
> " for the whole,"

and referred to *McCabe vs. A., T. & S. F. R'y Co.*, 235 U. S., 151, as authority.

We respectfully submit that, instead of being authority against appellee's right to maintain this action under equity rule 38, the McCabe case is really authority in support thereof. In that case five negro citizens of Oklahoma brought a suit in equity to restrain the railroad company from making any distinction in service on account of race, and in dismissing the bill this court said:

> "It is not alleged that any one of the complainants
> " has ever traveled on any one of the five railroads, or
> " has ever requested transportation on any of them; or
> " that any one of the complainants has ever requested
> " that accommodations be furnished to him in any
> " sleeping cars, dining cars or chair cars; or that any
> " of these five companies has ever notified any one of
> " these complainants that such accommodations would
> " not be furnished to him, when furnished to others,
> " upon reasonable request and payment of the cus-
> " tomary charge. Nor is there anything to show that
> " in case any of these complainants offers himself as

> "a passenger on any of these roads and is refused
> "accommodations equal to those afforded to others on
> "a like journey, he will not have an adequate remedy
> "at law. The desire to obtain a sweeping injunction
> "cannot be accepted as a substitute for compliance
> "with the general rule that the complainant must
> "present facts sufficient to show that his individual
> "need requires the remedy for which he asks."

In this case appellee does not seek relief because some one else will be injured, but because of the irreparable harm that will result to himself. It is true the Arizona law directly and injuriously affects the employee Truax, but he might be able to employ some one else. As to Raich, however, the law is aimed directly at him, and a large number of other aliens, residents in Arizona. He is the one who is to lose his employment, his right to labor, and such loss is not only because of the threatened loss of his present place, but because of the prohibition generally against his employment by others.

As stated by the court below:

> "On behalf of the State of Arizona, it is avowed
> "that by the Attorney General, that the law will be
> "enforced against all persons within its borders,"

and the bill of complaint specifically avers that—

> "on the 9th day of December, 1914, Truax did in-
> "form complainant that as soon as said pretended
> "law should be proclaimed, *and solely by reason*
> "*thereof,* and because he feared to incur its penalties
> "if he should violate the terms thereof, he would dis-
> "charge complainant from his employment" (Rec., p. 3.)

Here, then, is presented a state of facts showing a direct personal injury to appellee solely because of the law complained of, and it also clearly follows that appellee had no adequate remedy at law.

Should Truax continue to employ appellee and be crim-

inally sued under this law appellee Raich would not be a party to such action, nor could his employer Truax raise the constitutional rights of Raich. Unless appellee is barred from asserting any legal right in the courts, which will hardly be asserted, he has a right in equity to defend himself against the application of an unconstitutional and highly discriminatory law, which, if enforced, will deprive him of his right to labor.

As very pointedly stated by the district court:

> "We think the position taken by respondents that " the institution of a criminal proceeding against the " respondent Truax in the State courts will afford " ample means of determining judicially the rights of " the complainant in the case at bar, is untenable. " The complainant is not a party to any such crim- " inal proceeding, nor can he be made a party thereto; " nor can he be heard therein, nor can he be in any " legal sense secure or require that his legal rights be " determined therein. If he cannot secure his legal " rights in a court of equity he cannot secure them at " all, for he is powerless to secure them in any legal " proceedings that have been or can be instituted " under this law and he cannot secure them in any " action at law for damages. It cannot be success- " fully contended that he has no legal rights. It is " axiomatic that every man within the territorial " jurisdiction is entitled to his day in court. This " complainant can have no day in court save in a " court of equity" (Rec., p. 30).

Following this line of thought it becomes manifest that because of this Arizona law appellee is about to be deprived of that which to him is his liberty and property, to wit: his right to earn a livelihood by labor. As the great majority of the residents in the United States earn their living by labor, to deprive them or one of them of that right would be to take away the very essence of life itself. The damage to appellee is not remote or problematical. It is present and real.

As a matter of fact this proceeding in equity was not, as suggested by counsel for appellant, an effort to prevent or interfere with criminal proceedings. The criminal proceedings under the Arizona law would not have been against appellee, but against appellant Truax. The bill was filed to prevent the enforcement of an unconstitutional law which in its enforcement was going to prevent Raich from obtaining the equal protection of the law and deprive him of the right, privilege, and immunity, without discrimination as an alien to be employed in the lawful occupation he now enjoys and is entitled to enjoy. Wholly aside, therefore, from any question of criminal proceedings, Raich had a perfect right to institute and maintain this equity suit as the only way available to defend his constitutional rights.

As said in the McCabe opinion, *supra:*

> "This argument with respect to volume of traffic
> " seems to us to be without merit. It makes the con-
> " stitutional right depend upon the number of per-
> " sons who may be discriminated against, whereas the
> " essence of the constitutional right is that it is a
> " *personal* one. * * * It is the *individual* who
> " is entitled to the equal protection of the laws."

Assuming the free right of contract guaranteed to the individual by the fundamental law, which permits him to employ or to refuse to employ whomsoever he will in the conduct of his private business, when no question of public policy or the general welfare is involved, exists to its fullest extent and that legislation unduly restricting that right might in certain cases be successfully challenged as invalid, in *Ex parte Parrott,* 1 Fed., 481, dealing with treaty rights of Chinese, under the law of California prohibiting their employment, the court said:

> "If the right and purpose of the law be to accom-
> " plish an unconstitutional object, the fact that it is
> " passed in the pretended exercise of the police power,
> " or a power to regulate corporations will not save it.
> " If a law of the State forbidding the Chinese to labor

" for a living or requiring them to obtain a license " for doing so, would have been plainly in violation " of the Constitution and treaty, the State cannot " attain the same end by addressing its prohibition " to corporations," citing

Cummings vs. Missouri, 4 Wall., 320.
Chy Lung vs. Freeman, 93 U. S., 275.

"The employment of Chinese, directly or indirectly " in any capacity by any of these corporations is pro- " hibited by law. No enumeration would, I think, " be attempted of the privileges, immunities, and ex- " emptions of the most favored nation, which would " exclude the right to labor for a living. It is as " inviolable as the right of property, for property is " the offspring of labor, it is as sacred as the right to " life, for life is taken if the means whereby we live " be taken."

VI.

The law of Arizona is unconstitutional also because in contravention of treaties executed by the United States.

Counsel for appellants suggest that they do not apprehend that appellee will now contend that the law in question contravenes any treaty between the United States and Austria for the reason:

A. That the bill did not raise the question;

B. The opinion of the district court did not touch upon that point, and

C. No treaty has been exchanged between the two countries relating to conditions under which labor may be performed by their inhabitants.

Inasmuch as counsel have raised this point, it may not be inappropriate to refer to the treaty between the United States and Austria-Hungary, proclaimed February 10, 1831, which provides:

"There shall be between the territories of the High
" Contracting Parties a reciprocal liberty of com-
" merce and navigation. The inhabitants of these
" respective States shall mutually have liberty to
" enter the ports, places and rivers of each party,
" wherever foreign commerce is permitted. They
" shall be at liberty to sojourn and reside in all parts
" whatever of said territories, in order to attend to
" their commercial affairs; and they shall enjoy to
" that effect the same security protection and privi-
" leges as natives of the country wherein they reside,
" on condition of their submitting to the laws and
" ordinances there prevailing."

Were it necessary to this case we should have no hesitation in contending that this treaty, in connection with the Constitution and laws of the United States, protected Raich in his right to labor in any part of the United States on an equality with the citizens of any other country, including the United States itself.

In view of the general provisions of treaties between the United States and foreign countries, since the Arizona law has application to *all* aliens, not to Raich alone, and observing the binding effect of such treaties upon the several States, it must be obvious that any law forbidding the citizens or subjects of *any* foreign power with whom a treaty exists from engaging in labor within the State would be null and void.

In *Philadelphia Company vs. Stimson*, 223 U. S., 605, this court held:

"If the conduct of the defendant constitutes an un-
" warrantable interference with property of the com-
" plainant, its resort to equity for protection is not to
" be defeated upon the ground that the suit is one
" against the United States. The exemption of the
" United States from suit does not protect its officers
" from personal liability to persons whose rights of
" property they have wrongfully invaded.
" *Little vs. Barreme*, 2 Cranch, 170;
" *U. S. vs. Lee*, 106 U. S., 195-220;
" *Belknap vs. Schild*, 161 U. S., 10-18;
" *Trudal vs. Wesley*, 167 U. S., 204;
" *Scranton vs. Wheeler*, 179 U. S., 141-152,

"and in case of an injury threatened by his illegal "action, the officer cannot claim immunity from in- "junction process. The principle has frequently "been applied with respect to State officers seeking "to enjoin unconstitutional enactments. Authorities "cited."

We therefore respectfully submit that the judgment of the district court should be affirmed:

I.

Because the Arizona law is clearly violative of the Fourteenth Amendment to the Constitution.

II.

Because appellee shows a direct personal injury to result to him from the threatened enforcement of said law and has no adequate remedy at law nor otherwise than in equity.

III.

Because the Arizona law is in contravention to the treaties existing between the United States and foreign nations, including Austria-Hungary, and therefore null and void.

Respectfully submitted,

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